

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)	2 CA-CR 2014-0200
)	No. CR20132921-001
Plaintiff,)	
)	
vs.)	
)	
THOMAS YATES,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE HOWARD FELL
Judge of the Superior Court
Division SR

OFFICIAL REPORTER'S TRANSCRIPT
JURY TRIAL - DAY 1

April 22, 2014

Tucson, Arizona

Reported by Nichole Forrest, CSR, CRR, RMR
Certified Reporter No. 50862

APPEARANCES

For the State:
Deborah Lee, Pima County Attorney's Office
Marieh Tanham, 38(d)

For the Defendant:
John Sando, Esquire
Joshua Furman, 38(d)

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PROCEEDINGS

THE COURT: This is CR20132921, State versus Thomas Yates. Mr. Yates is present out of custody with John Sando. Deborah Lee is here for the State.

MR. SANDO: And Josh Furman, 38(d).

THE COURT: Say again. Josh?

MR. SANDO: Joshua Furman.

THE COURT: F-u-r-m-a-n?

MR. FURMAN: Yes.

MS. LEE: And Marieh Tanha, T-a-n-h-a, our 38(d) for the State.

THE COURT: T-a-h --

MS. LEE: N-a.

THE COURT: Tanha.

MS. LEE: And Marieh is spelled with an H at the end.

THE COURT: Okay. As long as I got it phonetically. Is it Marieh or Maria?

MS. LEE: Marieh.

THE COURT: Marieh. Okay.

All right. So I read Judge Griffin's rulings and so forth. Is there anything else I need to --

1 that we need to talk about before we get going here?

2 MS. LEE: Briefly, Your Honor, prior -- just
3 moments ago I was reevaluating the case. And initially I
4 had agreed when Judge Griffin asked me to get into the
5 fact that my victim is employed at a strip club.

6 Because we now have 404 evidence that's been
7 deemed admissible, I don't think that it's necessary for
8 me to get into that fact. So I was hoping to move to
9 preclude that evidence from coming in.

10 Specifically the reason why I thought it was
11 necessary to get into that was the fact that the defense
12 filed their defense as being no sexual interest or
13 motivation. And I thought it was appropriate for the jury
14 to know that he was at the strip club and that's how he
15 met her.

16 But because now we have a 404 victim coming
17 who essentially will also say that Mr. Yates approached
18 her, offered free massages, free pills, but also asked her
19 to be his sex slave, I think that that evidence is
20 sufficient for the State's purposes. So we would move to
21 preclude the defense from getting into any mention about
22 her employment.

23 THE COURT: John?

24 MR. SANDO: That was never addressed in the
25 motion, Your Honor. In fact --

1 THE COURT: Yeah, I know. She's raising it
2 now.

3 MR. SANDO: Right. All the evidence is --
4 they argue about the 404. That's something that occurred
5 two years earlier. She was not a victim. It was not
6 against the law. He supposedly asked if he could be her
7 sub. That was that the word, sub.

8 Two years later we have this charge of a
9 sexual assault of groping of the crotch area. Completely
10 different. That's what I was arguing.

11 But the fact that if we -- it's unavoidable
12 we get into that because there's testimony from
13 Ms. Estrella that he used to come into the strip club she
14 worked in at about 11:00. Didn't drink. Would offer free
15 massages, would chitchat with the various girls there.

16 And the same goes with the alleged victim.
17 She had been working at Raiders Reef previously where he
18 met her. And he had given her several massages. In fact,
19 she came over three, four or five times to get massages at
20 her apartment where she would get a two-hour massage from
21 him for free because she said it was therapeutic for her
22 back pain. So it's unavoidable that we get into the fact
23 that these girls worked in strip clubs.

24 What Judge Griffin said was, I don't want to
25 hear about any alleged prostitution. That's a big

1 difference. So it's impossible not to have testimony that
2 Maria Estrella worked -- does work in a strip club on a
3 404(b).

4 THE COURT: Well, I'm not concerned about
5 the 404(b). I was talking about this Meagan Marlborough.

6 MR. SANDO: Yes. They met at a strip club.
7 She's going to testify that --

8 THE COURT: I understand that. But what's
9 relevant about the fact that they met at a strip club?

10 MR. SANDO: Because Maria Estrella is going
11 to say the same thing, Your Honor. And that's where they
12 met and that's how she got to know him because all the
13 other girls according to these witnesses also asked for
14 free massages for their backs in the club itself or
15 sometimes in the alleged victim's case at her apartment.
16 But that's where they met.

17 THE COURT: Okay. I'm still trying to
18 understand why it's important to know where Mr. Yates met
19 Ms. Marlborough other than at her place of employment or
20 at a bar. Why does it need to be a strip club?

21 MR. SANDO: Well, because that's where she
22 worked. That's where he met her.

23 THE COURT: No, I understand that. But why
24 is that relevant? That's what I'm not getting. Why is it
25 relevant?

1 MR. SANDO: Well, it will become apparent
2 during the testimony that because the detectives knew that
3 this girl was a stripper and was in this room alone with
4 Mr. Yates for two-hour intervals on several occasions,
5 that -- that he was asked for by many strippers to give a
6 free massage for nothing in return.

7 And it will become apparent because the
8 officers doubted her -- the first detective doubted her
9 testimony. She thought it might be prostitution related.
10 But Judge Griffin said, I don't want to hear anything
11 about prostitution.

12 But as far as strip clubs, that was never
13 addressed. It's going to be part and parcel of the whole
14 case. I don't think you can take it in a vacuum that he
15 met both people at a strip club and that -- and he gave
16 free massages to all these different people.

17 THE COURT: Deborah?

18 MS. LEE: I think counsel is kind of talking
19 in circles, but he did mention one thing that's the exact
20 concern of the State. And I know that there is
21 implications that the victim was alone with the defendant
22 for two hours and I know based on defense interviews that
23 where they're trying to go with this is that, you know,
24 she was a prostitute and that's what was going on.

25 There's no evidence of that going on. Even

1 the defendant said that there's no money exchanged. The
2 victim said there's no money exchanged. No evidence
3 whatsoever but speculation that perhaps there was
4 prostitution involved. And so that's been precluded.

5 And now what I'm asking -- and I never
6 brought this up specifically before today -- is that the
7 defense not be allowed to elicit testimony that she worked
8 at a strip club. I think it's prejudicial. I think that
9 the jury will be prone to making up their mind regarding
10 her credibility when they know what she did for
11 employment. And I don't think defense can articulate any
12 reason why it's essential to their case that that piece of
13 evidence come in.

14 If for whatever reason during the course of
15 the trial it somehow becomes relevant, obviously we can
16 address it at that time. But right now there isn't
17 anything that they can point to to say that they need to
18 get into this.

19 THE COURT: Last chance.

20 MR. SANDO: The fact that it may be
21 prejudicial doesn't matter, Your Honor. It's a fact in
22 the case. And for her to say, Well, they're not going to
23 believe -- she said it's a credibility problem. They're
24 not going to believe her if they hear she's a stripper.

25 The jury is entitled to hear anything that

1 might have to go with motive that is going to be involved
2 in this case. So if the jury decides that they don't like
3 this person, that's their decision. That's what it's all
4 about. They measure the credibility of the witness on the
5 stand.

6 THE COURT: So are you -- and I'm just
7 devil's advocate. So is it okay that the jury knows that
8 your client has a prior conviction as well?

9 MR. SANDO: That's a totally different ball
10 game.

11 THE COURT: Well, that would prejudice him
12 significantly. A lot of people have a negative
13 connotation for people who work in the business that
14 Ms. Marlborough apparently did. And that's my point. I
15 don't know why it's relevant where he met her.

16 You know, the fact that he was at her
17 apartment four or five times and gave her massages, great.
18 The fact that he met her at her place of employment or at
19 a bar, however you want -- but the fact that what she does
20 there I just don't see as relevant. All it does is it
21 prejudices her to make the jury think that women that work
22 in these kinds of places do other things for money.

23 MR. SANDO: I think the jury -- I see no
24 case law that says it should be stricken because a strip
25 club. It goes -- the police were suspicious of her story.

1 Okay? So this goes to the suspiciousness of the story.

2 THE COURT: And how is that relevant in this
3 case?

4 MR. SANDO: Well, we have Maria Estrella
5 who's going to testify that she was in the strip club.

6 THE COURT: Yeah. Well, that's her.

7 MR. SANDO: And we have to have evidence of
8 where they met, Meagan Marlborough and Thomas Yates, who
9 was at Raiders Reef.

10 THE COURT: At a bar?

11 MR. SANDO: At a -- well, at a strip club, a
12 gentlemen's club.

13 THE COURT: The Court finds that the
14 probative value does not outweigh the danger of unfair
15 prejudice. The fact that Ms. Marlborough works at what he
16 keeps referring to as a strip club is precluded.

17 All right. Anything else?

18 MS. LEE: We did have some redactions that I
19 believe defense -- we can address this later because
20 they're not needed today. But I just want to put on the
21 record that I e-mailed a copy of what I believe are
22 appropriate redactions from defense's -- the defendant's
23 interview seeing if we could stipulate to them.

24 I believe Mr. Sando is contesting each one.
25 So they were based primarily on the motions in limine that

1 Judge Griffin had ruled on. So I think we need to address
2 that before we reconvene tomorrow.

3 THE COURT: All right.

4 MR. SANDO: Judge, the Judge made certain
5 findings. We can probably get into that later. We have
6 his transcript. First of all, I don't think -- his
7 statement -- there's no declaration -- there's no
8 statements against his interest in this case. None of
9 it's hearsay. I don't think it should be admissible
10 because it's not a statement against interest. If he
11 takes the stand, that's a different ball game.

12 THE COURT: So this is a statement that he
13 made to the police --

14 MR. SANDO: Right.

15 THE COURT: -- when the police interviewed
16 him?

17 MR. SANDO: Yes.

18 THE COURT: And you say that's inadmissible
19 because of why?

20 MR. SANDO: Because nothing in here is a
21 statement against his interest. And the redacted parts
22 that she wants out are not hearsay. But again, we --

23 THE COURT: So what you're suggesting is
24 that if the statement comes in, the whole thing comes in?

25 MR. SANDO: Basically.

1 THE COURT: Okay.

2 MR. SANDO: But I don't think it comes in at
3 all unless he takes the stand.

4 THE COURT: Well, when did that rule -- I
5 mean I've been doing this for over 40 years. I'm not
6 familiar with that rule. The defendant's statement is
7 always admissible when it's offered by the State.

8 MR. SANDO: The rule still says it has to
9 have something against his proprietary or penal interest.

10 THE COURT: No, it doesn't. No, it doesn't.

11 MR. SANDO: That's my understanding.

12 THE COURT: It's the defendant's statement.
13 It's admissible when it's introduced by the State. It's
14 not admissible when it's introduced by the defense.

15 MR. SANDO: Well, if the Court intends to
16 allow this to be brought in in the case in chief, then I
17 think we should talk about these redactions which I do not
18 believe were covered by Judge Griffin's ruling nor --

19 THE COURT: All right. So your position is
20 that if I allow the statement to be presented, then you
21 want it presented in total?

22 MR. SANDO: Yes.

23 THE COURT: And the redactions refer -- give
24 me an example what you think should be redacted.

25 MS. LEE: There --

1 THE COURT: You know what, let's talk about
2 it -- you guys prepare -- talk about it after lunch before
3 I bring the jury back in. Okay?

4 MS. LEE: Okay.

5 THE COURT: And then you'll be more prepared
6 and I'll be more prepared.

7 All right. Anything else?

8 MS. LEE: Not from the State, Your Honor.

9 MR. SANDO: There is one other matter, Your
10 Honor. I don't know if we can address it now or not.
11 You've seen the Indictment?

12 THE COURT: Yes.

13 MR. SANDO: It says touching the vagina.

14 THE COURT: Right.

15 MR. SANDO: And the grand jury transcript
16 specifically says that this is a touching the vagina case.
17 There's inconsistent statements of the victim whether it
18 was under or over the underwear. Now, the statute says
19 direct or indirect.

20 THE COURT: Right.

21 MR. SANDO: But we're only on notice of the
22 actual Indictment, the specificity of the charges that's
23 been lodged against him, touching the vagina. So in order
24 to avoid a non-unanimous verdict where half of them say
25 well, I think he touched it over the underwear and another

1 half saying I think he touched her under the underwear,
2 it's a lack of a unanimous verdict.

3 And I think -- I'm asking the State to elect
4 which it's going to be, the Indictment or are they going
5 to be arguing indirect touching which we're not on notice
6 of other than the statute? Because you're only on notice
7 of the Indictment.

8 THE COURT: Right. And the string cite on
9 the Indictment indicates -- what is it? 14 -- what's the
10 number?

11 MS. LEE: 1404, Your Honor.

12 THE COURT: 1404. And when you look at the
13 definition of sexual contact, it includes as you pointed
14 out either direct or indirect. So if she proves -- if the
15 State proves that -- it's not -- it's not necessary for
16 the State to prove whether it was skin to skin or over
17 clothing so long as the State proves that there was a
18 touching of the vagina, whether it was direct or indirect.

19 And so you're on notice because the string
20 cite says direct or indirect. So I don't see that there's
21 a problem with the Indictment or that the State has to
22 elect whether it's skin to skin or over the clothing.

23 MR. SANDO: Because the grand jury
24 transcript and the Indictment specifically only talk about
25 touching the vagina, which is what we're -- directly,

1 which is only what we're on notice of. And I think --

2 THE COURT: Well, it doesn't stay directly.
3 It says knowingly engaged in sexual contact with Meagan
4 Marlborough by touching the victim's vagina without her
5 consent.

6 MR. SANDO: But if you look at the grand
7 jury transcript, it specifically says skin to skin.

8 THE COURT: Okay. Well, we're past that
9 now. You know, there would have been a motion filed
10 suggesting that -- I don't know what. But you would have
11 filed a motion challenging the presentation to the grand
12 jury. I don't know whether you did or you didn't.

13 MR. SANDO: I couldn't challenge what the
14 grand jury did, but they -- I believe they've elected that
15 this is a touching the vagina and --

16 THE COURT: I don't agree, but we'll deal
17 with it. You know, we'll see what happens at the time of
18 the Rule 20 if we get that far.

19 All right. Are we ready?

20 MS. LEE: Yes.

21 MR. SANDO: Yes.

22 THE COURT: Okay.

23 THE BAILIFF: Jury entering.

24 (The prospective jurors entered the
25 courtroom.)

1 THE COURT: Go ahead and sit down, Counsel.
2 Hi, ladies and gentlemen. This is criminal
3 case CR20132921.

4 The State ready to proceed?

5 MS. LEE: Yes, Your Honor.

6 THE COURT: And the defense?

7 MR. SANDO: We are, Your Honor.

8 THE COURT: Okay. Would all of you stand
9 and be sworn as potential jurors for me, please. Those of
10 you in the back as well.

11 (Prospective Jury panel sworn.)

12 THE COURT: Okay, thanks. Have a seat.

13 Erin's going to call the names of the first
14 21 of you now, those of you that are already seated. When
15 she calls your name, just say hi or I'm here so I know
16 you're sitting where I expect you to be.

17 THE CLERK: Frances Lopez.

18 PROSPECTIVE JUROR: Here.

19 THE CLERK: Edilene Reyes.

20 PROSPECTIVE JUROR: Here.

21 THE CLERK: Bryan Goldkuhl.

22 PROSPECTIVE JUROR: Here.

23 THE CLERK: Esther Sutton.

24 PROSPECTIVE JUROR: Here.

25 THE CLERK: Vanessa Gallegos.

1 PROSPECTIVE JUROR: Here.
2 THE CLERK: Michael Randall.
3 PROSPECTIVE JUROR: Here.
4 THE CLERK: Michael Garland.
5 PROSPECTIVE JUROR: Here.
6 THE CLERK: John Macko.
7 PROSPECTIVE JUROR: Here.
8 THE CLERK: Caitlin Myers.
9 PROSPECTIVE JUROR: Here.
10 THE CLERK: Spencer Gray.
11 PROSPECTIVE JUROR: Here.
12 THE CLERK: Frank Taylor.
13 PROSPECTIVE JUROR: Here.
14 THE CLERK: Camille Warner.
15 PROSPECTIVE JUROR: Here.
16 THE CLERK: Sarah Mackie.
17 PROSPECTIVE JUROR: Here.
18 THE CLERK: Linda Daoud.
19 PROSPECTIVE JUROR: Yes.
20 THE CLERK: Marcile Wise.
21 PROSPECTIVE JUROR: Here.
22 THE CLERK: Mario Enamorado.
23 PROSPECTIVE JUROR: Here.
24 THE CLERK: Douglas Ferraro.
25 PROSPECTIVE JUROR: Here.

1 THE CLERK: Judith Martin.

2 PROSPECTIVE JUROR: Here.

3 THE CLERK: Raymond Villegas.

4 PROSPECTIVE JUROR: Here.

5 THE CLERK: Thomas Johnson.

6 PROSPECTIVE JUROR: Here.

7 THE CLERK: Irma Thibault.

8 PROSPECTIVE JUROR: Here.

9 THE COURT: Okay, thanks.

10 So did you see what you guys did? So I said
11 you can say hi or here or whatever you want. And
12 Ms. Lopez said here, and everybody said here.

13 Okay. All right. So this is a criminal
14 case. I want to talk to you a little bit and then ask you
15 some questions.

16 This is what we do in the jury selection
17 process. We call it voir dire, jury selection. So I'll
18 ask you a bunch of questions to determine whether or not
19 you could be a fair and impartial juror in this case.

20 Mr. Thomas Yates is the person that's
21 accused. If you have a yes answer to anything that I ask,
22 raise your hand and I'll call on you. If it's something
23 you don't want to talk about in the presence of everybody
24 in the room, let me know. You can come up here with
25 counsel present. I can take your answer up here. If you

1 have a no answer, you don't have to do anything.

2 For those of you whose names weren't called
3 yet, I'd appreciate it if you'd pay close attention to the
4 questions in the event that I excuse one of the first 21
5 jurors. Erin will call another name. If your name is
6 called, probably the first thing I'll ask is whether or
7 not you have any yes answers.

8 So as I said, this is a criminal case.
9 Mr. Yates has been accused of committing an offense.
10 Anybody who's accused of committing a criminal offense is
11 presumed by law to be innocent.

12 So what that means is that as Mr. Yates sits
13 here, he is absolutely innocent and he remains that way
14 unless and until the State proves him guilty beyond a
15 reasonable doubt. That's the quantum of proof that the
16 State has to present to a jury before a jury could find
17 someone guilty of committing an offense.

18 The State in this case is represented by
19 Deborah Lee. She's going to stand up now. And she works
20 for the county attorney's office.

21 The lady with the light gray suit is Marieh
22 Tanha. Marieh is what we call a 38 -- what letter are we
23 on? D or E? E? A 38(e) student. Our Supreme Court
24 allows law students who are qualified to work with a
25 licensed lawyer and actually present cases and do direct

1 examination, cross-examination and so forth in our
2 Superior Court. So Marieh is -- has that certification
3 from the Supreme Court, so she's going to be assisting Ms.
4 Lee.

5 Does anybody know Ms. Lee or anybody who
6 works for the county attorney's office? Does anybody know
7 or recognize her or Ms. Tanha?

8 No?

9 Okay. You can sit down.

10 And seated with the lawyers -- lawyer and
11 lawyer to be, this is Detective Dobell.

12 MR. DOBELL: Good morning, sir.

13 THE COURT: And he works with the Tucson
14 Police Department. Does anybody recognize Detective
15 Robert Dobell? Has he ever given you a ticket or
16 anything?

17 No?

18 Okay. All right. Mr. Yates is represented
19 by John Sando. And John's going to stand up now. And
20 then with John is Josh Furman. And Josh is also a 38(e)
21 student, so he's going to be working with Mr. Sando.
22 Mr. Sando works for the public defender's office. Lori
23 Lefferts is the public defender. Does anybody know or
24 recognize Mr. Sando or know anybody who works for the
25 public defender's office or know Mr. Furman?

1 No?

2 Okay. And then -- you don't have to stand
3 up, Mr. Yates. I know it is difficult for you.

4 Mr. Yates, Thomas Yates is the accused. Does anybody know
5 or recognize Mr. Yates?

6 All right. So as I said, Mr. Yates is
7 accused of committing an offense. I'll tell you about it
8 in a moment. Again, he's presumed by law to be innocent.
9 So he is unless and until the State proves him guilty
10 beyond a reasonable doubt.

11 What your job is going to be if you're
12 selected to sit as a juror is you're going to listen to
13 the evidence, decide what the facts are based on the
14 evidence that you hear and see.

15 Once you figure out what the facts are,
16 you'll apply the facts to the law that I instruct you on
17 later on and then you'll render a verdict if you can. And
18 you have to do that fairly and impartially.

19 So we call the jurors the finders of fact
20 because that's what you do. As I said, you figure out
21 what the facts are based on the evidence that you hear and
22 see in the courtroom.

23 Mr. Yates is accused of Count 1, which is
24 sexual abuse. It alleges that on October 5th of 2012
25 Mr. Yates committed sexual abuse by intentionally or

1 knowingly engaging in sexual contact with a woman named
2 Meagan Marlborough, an adult, by touching the victim's
3 vagina without her consent.

4 Now, at a previous hearing Mr. Yates has
5 pled not guilty, so that's why we're here today. We'll
6 select a jury. The State will present its evidence. And
7 based on the evidence, the facts that you find from the
8 evidence and the law that I present to you, you'll decide
9 whether or not the State has proven its case beyond a
10 reasonable doubt.

11 Now, because of the presumption of
12 innocence, Mr. Yates doesn't have to testify at this trial
13 if he doesn't want to. He doesn't have to call any
14 witnesses if he doesn't want to. And frankly, he doesn't
15 have to be here if he doesn't want to be.

16 And that's because the State has the burden
17 of proving him guilty beyond a reasonable doubt. That
18 burden never shifts throughout the trial. It always rests
19 with the State. If the State doesn't meet that burden,
20 then you find Mr. Yates not guilty.

21 Now, when I talk about this with jurors
22 about the presumption of innocence, the fact that
23 Mr. Yates doesn't have to testify if he doesn't want to
24 and so forth, everybody obviously understands that. But
25 sometimes jurors say, well, you know, I get it, but if I

1 don't hear from in this case Mr. Yates, I don't think I
2 can be fair and impartial. I don't think I could sit on
3 this jury unless I hear him testify.

4 Understanding that he has no obligation to
5 do so, he's got a constitutional right to remain silent
6 and so forth, assuming -- and I don't know what he's going
7 to do. He'll tell me later. But assuming he decides not
8 to testify, is there anybody who feels that because they
9 don't hear from him that they could not be a fair and
10 impartial juror?

11 Okay. Ms. Daoud. And that's because what?

12 PROSPECTIVE JUROR: I feel that it would be
13 important to hear from the defendant.

14 THE COURT: Okay. But you understand he has
15 no obligation?

16 PROSPECTIVE JUROR: I understand.

17 THE COURT: Okay. So -- so let me just ask
18 you something else. So I'll make something up. You have
19 a sister named Beverly, and Beverly gets in trouble and
20 she's accused of committing a crime. And she says to you,
21 Linda, I didn't do this. And you say, Well, I'm sure you
22 didn't. I know you. You would never do this kind of a
23 thing.

24 And she says, But, you know, I'm going to
25 have a trial, and my lawyer says that it's up to me

1 whether or not I testify. And I don't have to. And you
2 know me. When I testify -- when I talk to people,
3 sometimes they get the wrong impression or I get so
4 nervous that people might think I'm not telling the truth.
5 And you say, Yeah, I know that about you. What should I
6 do, Linda? What do you tell her?

7 PROSPECTIVE JUROR: Tell her to do what
8 she's comfortable with, but I'm not comfortable -- I feel
9 that I'm intuitive enough to know the truth
10 from --

11 THE COURT: And in order to determine that,
12 you would have to hear from the accused?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Okay. All right. You're
15 excused. Go downstairs. Check in with the jury
16 commissioner for me, okay?

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Anybody else?

19 For number 14.

20 THE CLERK: Jeffrey Brown.

21 THE COURT: Hi, Mr. Brown. Any yes answers
22 yet, sir?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Okay. Go ahead and take that
25 empty seat then.

1 So because Ms. Daoud just said something
2 about being intuitive, I'll ask you this. Does anybody
3 know what the next question is going to be? Well, the
4 reason I ask is because -- this was many years ago. But
5 there was a lady sitting there where Ms. Gallegos was
6 sitting. And when I asked do you know what the next
7 question is going to be, she raised her hand. And I
8 thought whoa, what's going to happen.

9 And she said, Yes. What you're wondering is
10 whether or not I know what the result is going to be
11 before I hear anything. And I said, Yeah.

12 And she said, You know, and the other thing
13 I can do is when the phone rings, I always know who's on
14 the other end before I pick it up. And I said, Okay. And
15 I said, Well, all right, if you're so smart, what's going
16 to happen next? And she said, You're going to excuse me.
17 And I did.

18 So do any of you feel like you have any
19 intuitive powers or other kinds of powers that you think
20 you're going to know what this is all about before you
21 hear a word about it?

22 All right. Anybody else on the issue if
23 Mr. Yates decides not to testify?

24 So as I said, you're going to have to decide
25 what the facts are based on the evidence that you hear and

1 see in the courtroom.

2 The witnesses that are going to testify in
3 this case are the alleged victim, Meagan Marlborough; a
4 man named Stephen Sumner; Officer Kyle Frank, he's with
5 TPD; Nora Rankin, she's with Tucson Police Department.
6 You already met Detective Dobell. James Hancox,
7 H-a-n-c-o-x, and Maria Estrella. Do any of those names
8 seem familiar to you? Do you think you know any of those
9 folks?

10 All right. So if you're selected to sit as
11 a juror and one of these people comes into the courtroom
12 and you recognize them by sight, then you let me know so I
13 can find out how you know them and whether or not it would
14 interfere with your ability to be a fair and impartial
15 juror.

16 Have any of you even been the victim of a
17 crime, any kind of a crime, either something that's
18 alleged here or a burglary or your car was stolen or
19 anything like that?

20 All right. I'll start in the back row with
21 Mr. Goldkuhl.

22 PROSPECTIVE JUROR: I've had some vandalism
23 on my property, my vehicles.

24 THE COURT: How long ago was the most
25 recent?

1 PROSPECTIVE JUROR: Oh, it's many years ago.

2 THE COURT: Anybody else in the back row?

3 Mr. Garland.

4 PROSPECTIVE JUROR: I work as a corrections
5 officer. And two inmates tried to kidnap me and take me
6 prisoner.

7 THE COURT: All right. Is there anything
8 about your training and experience as a corrections
9 officer or that particular incident or other things that
10 you've seen in your work that would interfere with your
11 ability to be fair and impartial?

12 PROSPECTIVE JUROR: I don't think so.

13 THE COURT: Are you a corrections officer
14 here at the Pima County Jail?

15 PROSPECTIVE JUROR: I was. I know -- I work
16 for every department.

17 THE COURT: Okay.

18 All right. Anybody else in the back row a
19 victim of a crime?

20 Ms. Myers.

21 PROSPECTIVE JUROR: May I --

22 THE COURT: Sure. Counsel.

23 (The following proceedings held at sidebar.)

24 PROSPECTIVE JUROR: I was the victim of a
25 sexual assault. It was never taken to court.

1 THE COURT: You don't want to listen to
2 this?

3 (The following proceedings held in open
4 court.)

5 THE COURT: Go downstairs, Ms. Myers. Check
6 in with the jury commissioner. Thank you very much.

7 That was number 9, Ms. Myers.

8 Thank you.

9 PROSPECTIVE JUROR: Thank you.

10 THE COURT: All right. Let's fill in that
11 seat.

12 THE CLERK: Shawna McKee.

13 THE COURT: Hi, Ms. McKee. Any yes answers
14 yet?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: To what?

17 PROSPECTIVE JUROR: I had my car broken into
18 about three weeks ago and things taken.

19 THE COURT: Oh, lucky you.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: All right. Go ahead and have a
22 seat.

23 Anybody else in the back row a victim of a
24 crime?

25 In the next row down, the middle down, a

1 victim of a crime?

2 Mr. Taylor.

3 PROSPECTIVE JUROR: One of your basic normal
4 kid robberies of a house and probably a kid robbery of a
5 car about a year and a half ago.

6 THE COURT: Okay.

7 Ms. McKee.

8 PROSPECTIVE JUROR: I've had my car broken
9 into a few times.

10 THE COURT: All right.

11 Mr. Brown.

12 PROSPECTIVE JUROR: Vandalism of a house.

13 THE COURT: Vandalism of a house?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Ms. Wise. No, you didn't --
16 anybody else in that row?

17 In the front row, victim of a crime?

18 Mr. Ferraro.

19 PROSPECTIVE JUROR: Car broken into.

20 THE COURT: How long ago?

21 PROSPECTIVE JUROR: Year, year and a half.

22 THE COURT: Mr. Villegas.

23 PROSPECTIVE JUROR: May I approach, please?

24 THE COURT: Yes.

25 (The following proceedings held at sidebar.)

1 PROSPECTIVE JUROR: I was assaulted.

2 THE COURT: You're not comfortable?

3 PROSPECTIVE JUROR: No.

4 (The following proceedings held in open
5 court.)

6 THE COURT: Okay. Go downstairs,
7 Mr. Villegas. Check in with the jury commissioner. Thank
8 you very much.

9 Ms. Martin.

10 PROSPECTIVE JUROR: I had my car stolen
11 about 15 years ago.

12 THE COURT: Anybody else?

13 Mr. Johnson.

14 PROSPECTIVE JUROR: I had my house broken
15 into probably two and a half years ago.

16 THE COURT: And Ms. Thibault.

17 PROSPECTIVE JUROR: I had my house broken
18 into ten years ago.

19 THE COURT: For number 19, please.

20 THE CLERK: Margaret Wiley.

21 THE COURT: Hi, Ms. Wiley. Do you have any
22 yes answers yet, Ms. Wiley?

23 PROSPECTIVE JUROR: Yes, I do.

24 THE COURT: To what?

25 PROSPECTIVE JUROR: I know Nora Rankin.

1 THE COURT: Oh, do you?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay. Is there anything about
4 knowing Ms. Rankin that would --

5 PROSPECTIVE JUROR: No.

6 THE COURT: -- somehow interfere? How do
7 you know her? Socially?

8 PROSPECTIVE JUROR: We've served on -- yeah,
9 socially. We've served on committees together.

10 THE COURT: Okay. All right. Thank you
11 very much.

12 Have any of you ever been arrested, charged
13 or convicted of anything other than a minor traffic
14 offense? Arrested, charged or convicted of anything other
15 than a minor traffic offense? Anybody?

16 Ms. Wiley.

17 PROSPECTIVE JUROR: May I approach?

18 THE COURT: Sure. Counsel.

19 (The following proceedings held at sidebar.)

20 PROSPECTIVE JUROR: I was arrested for
21 shoplifting.

22 THE COURT: How long ago?

23 PROSPECTIVE JUROR: Many years.

24 THE COURT: Are you over it?

25 PROSPECTIVE JUROR: Yes.

1 (The following proceedings held in open
2 court.)

3 THE COURT: Anybody else arrested, charged
4 or convicted?

5 Mr. Goldkuhl.

6 PROSPECTIVE JUROR: I wasn't arrested, but I
7 was charged with a hit-and-run which was reduced to a
8 failure to yield.

9 THE COURT: Okay. Anything about that
10 little situation that will interfere here in any way?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Anybody else?

13 Mr. Randall, is it?

14 PROSPECTIVE JUROR: May I go up there?

15 THE COURT: Yeah. Come on up.

16 Counsel.

17 (The following proceedings held at sidebar.)

18 PROSPECTIVE JUROR: I was assaulted.

19 THE COURT: You were assaulted?

20 PROSPECTIVE JUROR: Yeah. I was assaulted
21 and I was charged with it.

22 THE COURT: Is there anything about that
23 that would interfere here in any way?

24 PROSPECTIVE JUROR: No.

25 THE COURT: How long ago it?

1 PROSPECTIVE JUROR: Two years ago. I went
2 to trial for it.

3 THE COURT: What happened?

4 PROSPECTIVE JUROR: Not guilty.

5 THE COURT: Is that going to interfere with
6 your ability to sit and listen to this case?

7 PROSPECTIVE JUROR: No, sir. He was charged
8 with assault.

9 THE COURT: Okay. Go ahead and have a seat.
10 (The following proceedings held in open
11 court.)

12 THE COURT: Before you guys sit down,
13 anybody else who has been arrested, charged or convicted
14 and wants to come up here to tell me about it?

15 Okay.

16 All right. Go ahead and sit down.

17 All right. Anybody else on that issue?

18 Mr. Gray.

19 PROSPECTIVE JUROR: A DUI.

20 THE COURT: How long ago?

21 PROSPECTIVE JUROR: Most recently 2005.

22 THE COURT: Okay. Anything about your
23 situation going to interfere here in any way?

24 PROSPECTIVE JUROR: I don't believe so.

25 THE COURT: Okay. Anybody else?

1	No?
---	-----

2 All right. I'm going to expand this now to
3 a real close friend or a relative who has been arrested,
4 charged or convicted. A real close friend or a relative.
5 Okay, lots of hands. We'll start in the back row.

6 Ms. Lopez.

7 PROSPECTIVE JUROR: My son served four years
8 in prison for drinking and driving.

9 THE COURT: All right. Anything about his
10 situation going to interfere here?

11 PROSPECTIVE JUROR: No, because he passed
12 away.

13 THE COURT: Okay. I'm sorry about that.
14 Ms. Reyes.

15 PROSPECTIVE JUROR: My older brother got
16 charged with --

17 THE COURT REPORTER: I'm sorry. I can't
18 hear you.

19 THE COURT: My older brother got charged
20 with --

21 PROSPECTIVE JUROR: Robbery.

22 THE COURT: Robbery. Is there anything
23 about his situation that would interfere here? No?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Anybody else in the back row?

1 Ms. Gallegos.

2 PROSPECTIVE JUROR: My nephew is serving
3 three years in prison for a robbery.

4 THE COURT: Anything about his situation?
5 No?

6 Anybody else in the back row?

7 In the middle row?

8 Mr. Gray.

9 PROSPECTIVE JUROR: My younger brother
10 served a few years in prison in California for burglary.

11 THE COURT: Anything about his situation
12 going to trouble you here?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Ms. McKee.

15 PROSPECTIVE JUROR: My husband got a DUI and
16 my stepbrother is in prison.

17 THE COURT: Anything about either of their
18 situations? No?

19 I saw another hand in that row.

20 Ms. Wise.

21 PROSPECTIVE JUROR: My nephew is serving
22 time for drugs.

23 THE COURT: Anything about his situation?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Anybody else? Did I miss

1 anybody?

2 Okay. Let me tell you what the schedule is
3 going to be.

4 Oh, I'm sorry.

5 PROSPECTIVE JUROR: I had an uncle that was
6 charged for dealing drugs and then cousin for human
7 trafficking.

8 THE COURT: Okay. Either of those
9 situations going to interfere here?

10 PROSPECTIVE JUROR: No.

11 THE COURT: No?

12 All right. Anybody else?

13 All right. So let me tell you what the
14 schedule is going to be. Before I do that, I want to
15 advise you, tell you that -- talking like a police
16 officer -- that the only way that I can excuse you from
17 jury service is if you cannot be fair and impartial. So
18 everybody said they could be. Or jury service would
19 impose an undue hardship upon you.

20 Undue hardship. So what's that? Missing
21 work generally doesn't count unless missing your
22 particular job would somehow interfere significantly with
23 public safety, health, welfare, that kind of thing. I'll
24 listen to you if it's work related. I just don't promise
25 you that I'll excuse you for that.

1 The kinds of things I will excuse you for
2 are nonrefundable airplane tickets, doctor's appointments,
3 having to take care of someone that needs your assistance
4 that couldn't deal without you, that kind of thing.

5 So keeping that in mind and what the
6 parameters are -- oh, and the schedule before I ask you if
7 you have a hardship. We'll work till noon. We'll
8 probably finish jury selection about then. We'll work
9 this afternoon from about 1:15 no later than 5:00. We
10 might break early.

11 Tomorrow we'll start at about 10:15 and
12 again work till noon. The State feels -- and then lunch
13 break. Again, the afternoon.

14 The State thinks that they're going to
15 finish presenting all of their witnesses by mid afternoon
16 tomorrow.

17 And then of course the defense as I said
18 doesn't have to present any witnesses. Mr. Yates doesn't
19 have to testify. He doesn't have to call any witnesses.
20 But if they do, if Mr. Yates testifies or they -- or the
21 defense calls any witnesses, we'll hear from them tomorrow
22 afternoon.

23 Once you hear all the evidence and see all
24 the evidence, then I'll instruct you and then you'll
25 deliberate. So if we get to deliberations tomorrow at

1 noon, you'll start. If you don't finish them, you'll come
2 back Thursday morning at 9:00.

3 If we haven't quite finished the case by the
4 end of business tomorrow, then we'd start again Thursday
5 morning at 9:00 and then however long it takes you to
6 deliberate. So I need you today, tomorrow and probably
7 into Thursday for some part of Thursday.

8 So keeping that in mind and the hours that I
9 said, 10:15 to no later than 5:00 and then Thursday 9:00,
10 is there anybody who has anything you need to tell me
11 about why jury service for these couple days would pose an
12 undue hardship for you?

13 Ms. Warner.

14 PROSPECTIVE JUROR: I'm a long-haul truck
15 driver. And I have -- I work out of Oklahoma City. And
16 --

17 THE COURT: Did you see the game last night?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Oh.

20 PROSPECTIVE JUROR: What game? No, I was
21 watching the news. I'm sorry. I had to catch up on the
22 news.

23 THE COURT: Okay. All right. I forgive
24 you. All right.

25 PROSPECTIVE JUROR: I have four days off.

1 Today is day one. And once I go back, I'm back for four
2 weeks.

3 THE COURT: So you need to rest you're
4 telling me?

5 PROSPECTIVE JUROR: Yeah, pretty much.

6 THE COURT: Okay.

7 Anybody else?

8 Ms. Gallegos.

9 PROSPECTIVE JUROR: Can I --

10 THE COURT: Yeah, come on up.
11 Counsel.

12 (The following proceedings held at sidebar.)

13 PROSPECTIVE JUROR: I'm - I can't. My
14 daughter -- I'm the only one --

15 THE COURT: All right. Go ahead and sit
16 down for a second.

17 (The following proceedings held in open
18 court.)

19 THE COURT: Anybody else? Now's the time to
20 tell me.

21 Mr. Brown.

22 PROSPECTIVE JUROR: I'm diabetic. I'm just
23 on insulin. My blood sugar was out of control. How often
24 do we break?

25 THE COURT: We can break whenever you need

1 to and you can -- if you need a piece of candy or whatever
2 you need to sustain yourself, you can do that in the
3 courtroom. That's no problem.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: So if you feel comfortable then
6 with -- as I said, all you have to do is raise your hand
7 and say, I'm not -- I'm not feeling well. I need to eat
8 or I need to do whatever I need to do, we can stop. All
9 right?

10 Mr. Enamorado.

11 PROSPECTIVE JUROR: Yes, sir. Just are we
12 still doing yes questions? I don't know if counsel is
13 going to have an issue with law enforcement.

14 THE COURT: We'll get to that.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Yeah. Okay.

17 Ms. Reyes.

18 PROSPECTIVE JUROR: I'm a full-time student.
19 I go to school Tuesdays.

20 THE COURT: Okay.

21 Anybody else?

22 Ms. Sutton?

23 PROSPECTIVE JUROR: I'm a home health
24 physical therapist.

25 THE COURT: You have patients lined up?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: And there's nobody to --

4 THE COURT: Anybody else?

5 Okay. So Ms. Reyes, Ms. Sutton,

6 Ms. Gallegos, Mr. Brown -- or Mr. -- no, you said you're
7 okay, Mr. Brown. Ms. Warner, you're all excused, but you
8 do need to go back down -- oh, did I say Ms. Reyes? Yeah.
9 So you all have to go back downstairs to the jury
10 commissioner and check in.

11 And what's going to happen so that you
12 understand is they'll have you stay at least until after
13 lunch and then they'll probably send you to another
14 courtroom because we start trials at 1:30 as well. And
15 then if you get to this part, you'll tell the next Judge
16 the same thing and see what happens. Okay?

17 All right. All of you go downstairs and
18 check in with the jury commissioner.

19 All right, for number 2.

20 THE CLERK: Peter Ageh.

21 THE COURT: Hi. Is that how you say your
22 last name?

23 PROSPECTIVE JUROR: Ageh.

24 THE COURT: Well, that was close. Do you
25 have any yes answers yet, Mr. Ageh?

1 PROSPECTIVE JUROR: Yes. I had my car
2 stolen about a year and a half ago.

3 THE COURT: Wait. Don't sit there. You're
4 going to -- if you sit, you're going to sit right behind
5 you. Right. No, the next one. That's it.

6 Anything about that going to interfere here?

7 PROSPECTIVE JUROR: No.

8 THE COURT: And I guess I never did ask you
9 guys for any of you that said you were victimized in the
10 manner you described, is there anything about that
11 victimization that would interfere with your ability to be
12 fair and impartial?

13 Okay.

14 Oh, I'm sorry. I got it wrong. I've still
15 got it wrong, Mr. Ageh. You're in the seat -- yeah, the
16 first one over there. Sorry.

17 All right.

18 THE CLERK: Steven Edwards.

19 THE COURT: This is for number 4.
20 Mr. Edwards, hi. How about you, any yes answers yet?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. Have a seat.

23 For number 5.

24 THE CLERK: Logan Phillips.

25 THE COURT: Hi, Mr. Phillips.

1 PROSPECTIVE JUROR: Hello.

2 THE COURT: Any yes answers, sir?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: What?

5 PROSPECTIVE JUROR: Permission to approach?

6 THE COURT: Sure.

7 Counsel.

8 (The following proceedings held at sidebar.)

9 PROSPECTIVE JUROR: I was arrested for
10 marijuana possession when I was 18 and also I have a good
11 friend who was the victim of a crime, sexual assault.

12 THE COURT: Either of those things going to
13 interfere here?

14 PROSPECTIVE JUROR: I think.

15 (The following proceedings held in open
16 court.)

17 THE COURT: All right. Go downstairs.
18 Check in with the jury commissioner, Mr. Phillips.
19 Thanks.

20 Try 5 again, Erin.

21 THE CLERK: Nicholas Rozkuszka.

22 THE COURT: Mr. Rozkuszka, any yes answers
23 yet?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: What?

1 PROSPECTIVE JUROR: May I approach?

2 THE COURT: Yes.

3 (The following proceedings held at sidebar.)

4 PROSPECTIVE JUROR: I was the victim of a
5 malpractice lawsuit because of my arm. The doctor got
6 off. Should have won.

7 THE COURT: This is not a civil case.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: It's going to try to determine
10 whether or not the State proves beyond a reasonable doubt
11 that Mr. Yates committed this offense. It's different
12 than a civil case.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: So will you be okay?

15 PROSPECTIVE JUROR: I would -- I'll try.
16 But with the evidence being stacked against benefit of
17 doubt, you won't get it from me.

18 (The following proceedings held in open
19 court.)

20 THE COURT: Okay. Go downstairs and check
21 in with the jury commissioner.

22 All right. One more time number 5.

23 THE CLERK: Michele Erickson.

24 THE COURT: Hi, Ms. Erickson. Any yes
25 answers yet?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Have a seat in the back
3 row in the middle there.

4 And then for number 12?

5 THE CLERK: Leonard Gilman.

6 THE COURT: Hi, Mr. Gilman.

7 PROSPECTIVE JUROR: Hi.

8 THE COURT: Any yes answers yet, sir?

9 PROSPECTIVE JUROR: Yes. May I approach?

10 THE COURT: Yes.

11 (The following proceedings held at sidebar.)

12 PROSPECTIVE JUROR: Your Honor, prior to my
13 wife's death in 2003 we worked for a management company in
14 Tucson. She was attacked in an apartment and --

15 THE COURT: That would interfere?

16 PROSPECTIVE JUROR: I couldn't prosecute the
17 guy because he fled to Mexico.

18 THE COURT: That would interfere here?

19 PROSPECTIVE JUROR: It would.

20 (The following proceedings held in open
21 court.)

22 THE COURT: Okay. All right. Go downstairs
23 and check in with the jury commissioner.

24 Go ahead.

25 THE CLERK: Patricia Straus, number 12.

1 THE COURT: Hi, Ms. Straus.

2 PROSPECTIVE JUROR: Hi.

3 THE COURT: Do you have any yes answers?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: To what?

6 PROSPECTIVE JUROR: My house was vandalized
7 and my cars were broken into.

8 THE COURT: Okay. Either one of those
9 things going to interfere? No? Okay, have a seat.

10 All right. Let's move on. Anything anybody
11 needs to tell me now before I start asking more questions?
12 The questions get easier.

13 Have any of you ever served as a member of a
14 grand jury either federal, state or county?

15 Have any of you ever been --

16 Oh, Mr. Taylor, you have?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Where, here?

19 PROSPECTIVE JUROR: Washington, DC.

20 THE COURT: Okay. And that's when you sat
21 for months at a time?

22 PROSPECTIVE JUROR: It was a part-time job I
23 think.

24 THE COURT: Okay. Is there anything about
25 that experience that would interfere with your ability to

1 sit and listen to this case? And you understand that when
2 you're a grand juror, you decide whether there's probable
3 cause to believe a crime is committed. This is much more
4 serious than that. The standard is much higher. It's
5 beyond a reasonable doubt. You understand the difference?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. Anybody else?

8 Mr. Edwards.

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Where?

11 PROSPECTIVE JUROR: Here.

12 THE COURT: As a grand juror?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And that's where you were for
15 four months?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Is there anything about that
18 experience that would interfere with you? No? Okay.
19 When was that?

20 PROSPECTIVE JUROR: A year or so ago. 2010.

21 THE COURT: Okay. All right. Anybody else?
22 It's unusual that anybody ever is on a grand jury, but
23 there were two.

24 All right. How about have any of you ever
25 been called to testify as a witness in a criminal case?

1 Mr. Garland because of your employment.

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Is there anything about being
4 involved in the process that would interfere here?

5 PROSPECTIVE JUROR: No.

6 THE COURT: No. Okay.

7 Mr. Ferraro.

8 PROSPECTIVE JUROR: Yes. Years ago.

9 THE COURT: You were a witness for?

10 PROSPECTIVE JUROR: The prosecutor.

11 THE COURT: Okay. And what kind of case was
12 that if you remember?

13 PROSPECTIVE JUROR: I don't even remember
14 what kind of case.

15 THE COURT: Okay. Is there anything about
16 having been involved in the process that would interfere
17 here?

18 PROSPECTIVE JUROR: No.

19 THE COURT: No? Okay. Thanks.

20 Mr. Taylor.

21 PROSPECTIVE JUROR: I was director of
22 security for Continental Airlines. I had to go to court
23 as a witness to explain how we decided that somebody stole
24 something or did something else. We didn't prosecute it
25 of course. The police prosecuted it. It was just based

1 on our findings.

2 THE COURT: Okay. Anything about that
3 experience that would interfere here?

4 PROSPECTIVE JUROR: No.

5 THE COURT: All right. Thanks.
6 Anybody else?

7 So have any of you ever served other than
8 Mr. Garland has already talked about this in any kind of a
9 law enforcement capacity, a security guard, a police
10 officer, that kind of thing? And Mr. Enamorado, you've
11 been waiting for this one; right?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: What do you do?

14 PROSPECTIVE JUROR: I'm supervisor for the
15 U.S. Border Patrol.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I work out of Three
18 Points, Arizona.

19 THE COURT: Okay. Is there anything about
20 your training or experience in the Border Patrol that
21 would interfere with your ability to listen to this case?

22 PROSPECTIVE JUROR: No. We don't deal with
23 this type of cases.

24 THE COURT: Okay. All right.

25 And Mr. Ferraro.

1 PROSPECTIVE JUROR: Yes. My whole career.

2 THE COURT: What have you been doing?

3 PROSPECTIVE JUROR: Well, I was a lawyer.

4 My first job before I became a lawyer was with the
5 National Park Service. Then I was a prosecutor for --
6 between state and federal 30 years, a United States
7 Magistrate Judge.

8 THE COURT: Great. Okay. So you've been in
9 the business forever like me?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: 40 something years?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Is there anything about your
14 training, your experience on bench so forth that would
15 somehow interfere with your ability to be fair and
16 impartial?

17 PROSPECTIVE JUROR: I hope not.

18 THE COURT: Well, you better say no to that.
19 Is this going to interfere with your calendar?

20 PROSPECTIVE JUROR: No. I have coverage.

21 THE COURT: Okay.

22 All right. Anybody else? How about a real
23 close friend or relative that was or is involved in law
24 enforcement?

25 Ms. Erickson.

1 PROSPECTIVE JUROR: My cousin, Bill
2 Graymont, he's a police officer with TPD.

3 THE COURT: Anything about his job going to
4 interfere here?

5 PROSPECTIVE JUROR: No.

6 THE COURT: I saw another hand. Ms. McKee.

7 PROSPECTIVE JUROR: My cousin is a
8 corrections officer and my uncle a lawyer.

9 THE COURT: Okay. Anything about that
10 interfere?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Obviously, Marco, you have lots
13 of friends in law enforcement. Is anything about that
14 going to interfere?

15 PROSPECTIVE JUROR: One of my best friends
16 is his. He investigates child pornography.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: I don't think it will
19 interfere with my decision.

20 THE COURT: Okay. Anybody else a close
21 friend or relative?

22 Ms. Lopez.

23 PROSPECTIVE JUROR: I have a nephew in the
24 Tucson Police Department and a nephew that works --

25 THE COURT: Anything about their jobs going

1 to interfere here?

2 PROSPECTIVE JUROR: I don't believe so.

3 THE COURT: Okay. Ms. Wiley?

4 PROSPECTIVE JUROR: No.

5 THE COURT: No?

6 Mr. Johnson.

7 PROSPECTIVE JUROR: I have an uncle through
8 marriage who's a police officer with TPD. And no. And I
9 have a cousin who's a lawyer, but no.

10 THE COURT: We won't hold that against him.
11 Anybody else?

12 All right.

13 So in deciding the facts of the case
14 obviously you're going to have to evaluate the testimony
15 of the witnesses that you hear from and you see. So what
16 I need from you is a commitment that you will evaluate
17 each witness's testimony by the same standards.

18 So whatever criteria you use every day to
19 determine whether or not people are telling you the truth,
20 whether their memory is good and so forth, you use the
21 same criteria for everybody that testifies and then you
22 decide about their credibility. So nobody gets any more
23 or less weight or credibility just because of who they
24 are. All right? Everybody committed to that?

25 So an example. Would anybody give more or

1 less weight to the testimony of a police officer just
2 because they're a police officer or a UPS guy or the
3 clerk?

4 Okay. So you understand level playing
5 field. Everybody comes in, everybody is equal in terms of
6 their credibility. You apply the same criteria to each
7 individual that testifies and then you decide about that.
8 Okay? That's real important.

9 All right. Is there anybody who would be
10 unwilling or unable to follow the law as I instruct you
11 later on disregarding your own ideas or opinions about
12 what the law ought to be or should be?

13 Do any of you belong to any organizations
14 that advocate the change in our laws to make them more
15 strict or more lenient?

16 Do any of you belong to or contribute time
17 or money to any law enforcement organizations? How about
18 any NRA people?

19 Okay. Ms. Wiley and Ms. McKee. I assume
20 that won't interfere in any way here.

21 ACLU? Ms. Thibault, anything about that
22 going to interfere here?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Mother's Against Drunk Driving?
25 All right. Any organization at all that you are

1 interested in or participate in that you think because of
2 that interest or participation would interfere with your
3 ability to be a fair and impartial juror in this case?

4 All right. If selected to sit on the case,
5 would any of you be unwilling or unable to render a
6 verdict based solely on the evidence that you hear and see
7 in the courtroom?

8 Mr. Taylor?

9 PROSPECTIVE JUROR: I might be prejudiced
10 against him because I had a sister that was raped once.

11 THE COURT: All right. So you feel like you
12 could not be fair and impartial because of her situation
13 or you might not be able?

14 PROSPECTIVE JUROR: I might not be able.

15 THE COURT: Okay. That's good enough. You
16 go downstairs, check in with the jury commissioner. Okay?
17 For number 11.

18 THE CLERK: Courtney Latham.

19 THE COURT: Courtney, do you have any yes
20 answers yet?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: To what?

23 PROSPECTIVE JUROR: My dad was convicted of
24 fraud when I was a kid.

25 THE COURT: Okay. Anything about that that

1 would interfere?

2 PROSPECTIVE JUROR: No.

3 THE COURT: What are you studying?

4 PROSPECTIVE JUROR: Accounting.

5 THE COURT: Oh, okay. All right.

6 So as I said a couple of times now, the law
7 requires the State to prove Mr. Yates guilty beyond a
8 reasonable doubt. He's presumed by law to be innocent.
9 He doesn't have to testify, doesn't have to call any
10 witnesses.

11 Does anybody want me to go over any of that
12 anymore or do you have any questions about it or have you
13 changed your opinion about as an example whether Mr. Yates
14 decides to testify or not?

15 Apparently there is going to be some
16 evidence in the case concerning DNA; right?

17 MS. LEE: No.

18 THE COURT: What's Nora going to testify
19 about?

20 MS. LEE: There was no DNA in this case.

21 THE COURT: Okay. So she's going to testify
22 that there was no DNA in this case. Does anybody feel
23 like in either this kind of case or any kind of a case
24 that DNA must be presented in order for you to be firmly
25 convinced of a person's guilt? In other words, can the

1 State prove its case beyond a reasonable doubt without
2 providing DNA evidence? Anybody?

3 PROSPECTIVE JUROR: Your Honor, this --

4 THE COURT: Ms. Lopez?

5 PROSPECTIVE JUROR: Yes. Was the individual
6 raped did you say?

7 THE COURT: No. It alleges that there was a
8 touching of her vagina.

9 PROSPECTIVE JUROR: So there wouldn't be any
10 DNA.

11 THE COURT: Well --

12 MR. SANDO: Excuse me. To clarify the
13 point, there was DNA taken with a negative result.

14 THE COURT: Okay. So it was inconclusive?

15 MS. LEE: That is correct.

16 THE COURT: Or was it excluding?

17 MR. SANDO: Excluding.

18 THE COURT: All right. So there was DNA,
19 and it excluded Mr. Yates. Okay? Is that going to matter
20 to anybody?

21 All right. Have any of you had any
22 experience with either testing, analyzing, so forth DNA?
23 Any of you doctors or nurses, scientists?

24 Do any of you know each other?

25 There are two hands. Ms. Martin, you know

1 Ms. Straus?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: How?

4 PROSPECTIVE JUROR: Friendship. Common
5 friendship and church.

6 THE COURT: Okay. All right. So let's
7 assume that both of you get selected to sit as jurors on
8 this case and you don't agree with one another. Are you
9 going to never talk to each other again at church?

10 PROSPECTIVE JUROR: I don't think so.

11 THE COURT: Both of you could sit and
12 decide. And if you have differences of opinions, you
13 could stick with it and not be convinced by one or the
14 other?

15 PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Okay. All right. Well, that's
17 wrong. I shouldn't say it that way. You could be
18 convinced by one or the other, but you wouldn't change
19 your opinion just because you're friends?

20 PROSPECTIVE JUROR: No.

21 THE COURT: And you wanted to be consistent?

22 PROSPECTIVE JUROR: No.

23 THE COURT: I'm going to start with you,
24 Ms. Lopez. Would you please stand and answer the
25 questions on the easel. When you get to number 2, do not

1 tell us your address, just what area of town you live in.

2 PROSPECTIVE JUROR: My name is Frances
3 middle initial O Lopez. I live on the southwest side of
4 town. I was born here in Tucson and raised here in
5 Tucson.

6 I completed 12th grade.

7 I am married. My husband is disabled.

8 I have five children.

9 I am also retired. My interest or my
10 hobbies are reading mainly books of medical interests and
11 such.

12 I did have a prior jury service, but it was
13 about 15 years.

14 THE COURT: Was it a criminal case do you
15 remember?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. All right. Thanks.
18 Mr. Ageh.

19 PROSPECTIVE JUROR: My name is Peter O.
20 Ageh. I live in the west side of town. I was born and
21 raised here in Tucson.

22 I'm currently finishing my last year of
23 school.

24 I'm married. I have no children.

25 I work as a professional singer. My

1 interests are music and sports and coaching rugby.

2 And I've never served before.

3 THE COURT: Okay. Thanks.

4 Mr. Goldkuhl.

5 PROSPECTIVE JUROR: My name is Bryan

6 Goldkuhl. I live here in Tucson on the northwest side.

7 My education is I have a GED.

8 I'm married. I have four children 9, 18, 20
9 and 23.

10 My employment, I work for the Pima County
11 Community College District. I am a vocational education
12 instructor. My interests are automotive related. That's
13 what I teach.

14 And I do not have any prior jury experience.

15 THE COURT: Okay. Thanks.

16 Mr. Edwards.

17 PROSPECTIVE JUROR: My name is Steven

18 Edwards. I live in southeast Tucson. I was born and
19 raised in Long Beach, California.

20 Highest education is one year of college.

21 I am married. I have three kids all under
22 21.

23 Employment, I work for Sprint in customer
24 finance.

25 Interests, basketball.

1 And prior jury service, yes.

2 THE COURT: Okay. What was it? Was it a
3 criminal case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: No? Okay. Thanks.

6 Ms. Erickson.

7 PROSPECTIVE JUROR: Michele Erickson. Born
8 and raised in South Orange, New Jersey. I live on the
9 east side of Tucson.

10 I have a Master's in education.

11 I'm married with two children 12 and 8.

12 I am a teacher currently working as an
13 exceptional ed teacher's aide for emotionally disabled
14 students.

15 THE COURT: Great.

16 PROSPECTIVE JUROR: My interests are my
17 kids. Keep us very busy.

18 And no prior jury service.

19 THE COURT: Okay.

20 Mr. Randall.

21 PROSPECTIVE JUROR: Mike Randall. I was
22 born in Arizona.

23 Highest education is high school.

24 Single. No kids.

25 I work at Sprint also. Hobbies are sports.

1 And no prior service.

2 THE COURT: Okay.

3 Mr. Garland.

4 PROSPECTIVE JUROR: Michael Garland. Live
5 centrally. I was born here in Tucson and raised most of
6 it here. Military brat, so I moved around a lot.

7 Education, I've got a Bachelor's degree in
8 business, Associate's in respiratory therapy.

9 Married. My wife is a real estate agent.
10 Two kids 10 and 12.

11 Work for Pima County as a program
12 coordinator. Interests, college basketball, racquetball.

13 Prior jury service, a couple years a
14 criminal case, but I wasn't selected for the jury.

15 THE COURT: Okay. Thanks.

16 Mr. Macko.

17 PROSPECTIVE JUROR: My name is John Macko.
18 Born and raised in Tucson.

19 Completed high school. Current college
20 student.

21 Not married. No children.

22 I'm an inside sales associate for Lowe's.
23 Outdoors, distance running.

24 Civil case two years ago I was on a jury.

25 THE COURT: Thank you.

1 Ms. McKee.

2 PROSPECTIVE JUROR: My name is Shawna McKee.
3 I was born and raised in San Jose, California.

4 I am currently a grad student.

5 I am married. My husband is in the Air
6 Force.

7 I have four children 18, 16, 16 and 14.

8 I am currently employed at Positive ADA as
9 an ADA tutor.

10 And between four kids and school and work, I
11 have no interests or hobbies.

12 I have been called for jury service, but
13 never selected.

14 THE COURT: Okay. Thanks.

15 Mr. Gray.

16 PROSPECTIVE JUROR: My name is Spencer Gray.
17 I was born in Pasadena, California and raised in Tucson.

18 I am currently a student at Pima Community
19 College.

20 Never married. No children.

21 I'm currently a student aide at the Pima
22 Community College library.

23 Hobbies include sports, music.

24 And I've never served on a jury.

25 THE COURT: Okay.

1 Ms. Latham.

2 PROSPECTIVE JUROR: My name is Courtney
3 Latham. I was born and raised in Tucson. I live on the
4 east side of town.

5 I am currently completing my Master's in
6 accounting.

7 I'm single with no children.

8 I'm currently employed as a staff
9 accountant.

10 Interests, I like camping, backpacking, that
11 sort of thing.

12 I've never had any prior jury service.

13 THE COURT: And Ms. Straus.

14 PROSPECTIVE JUROR: My name is Patricia
15 Straus. I was born and raised in Tucson. I live on the
16 east side.

17 I completed three years of college.

18 I'm married. I have three children, three
19 grandchildren.

20 I'm retired.

21 And my interests are horses and swimming.

22 And I was on a criminal case many years ago.
23 I served on a jury.

24 THE COURT: And the person was accused of
25 what and the verdict was what?

1 PROSPECTIVE JUROR: Drugs.

2 THE COURT: Drugs. And the verdict?

3 PROSPECTIVE JUROR: Guilty.

4 THE COURT: Ms. Mackie.

5 PROSPECTIVE JUROR: My name is Sarah Mackie.

6 I was born and raised here and live on the east side of
7 town.

8 I have two college degrees, a Bachelor's and
9 Associates.

10 I am married, and my husband works in
11 construction.

12 I have no children.

13 I currently work as a certified veterinary
14 technician.

15 And I am active in two Celtic organizations
16 here in town.

17 And I have no prior jury service.

18 THE COURT: Mr. Brown.

19 PROSPECTIVE JUROR: I'm Jeff Brown. I was
20 born and raised in New Zealand. I live on the north side.

21 I have a degree in engineering.

22 I am married. My spouse is disabled. She
23 doesn't work.

24 I have no children.

25 I'm currently employed as an engineer.

1 My hobbies are metal working, woodworking,
2 landscape painting and a few others.

3 And I have served on a jury.

4 THE COURT: Was it a criminal case?

5 PROSPECTIVE JUROR: I can't remember. It
6 was ten years ago.

7 THE COURT: Ms. Wise.

8 PROSPECTIVE JUROR: I'm Marcy Wise, and I
9 prefer to be called Marcy.

10 THE COURT: Okay. Marcy.

11 PROSPECTIVE JUROR: And I was born and
12 raised in Indiana. I've been out here about 17 years.

13 I have a degree in organizational leadership
14 and supervision from Purdue.

15 I am currently engaged. Don't have any idea
16 when we're going to getting married down the road.

17 I have no children.

18 I'm presently looking for employment. My
19 other job ended a few weeks ago.

20 My interests are reading. I paint
21 furniture.

22 I was called for jury service, but was never
23 on a jury.

24 THE COURT: Okay. Thanks.

25 Mr. Enamorado.

1 PROSPECTIVE JUROR: My name is Mario
2 Enamorado. I was born in Honduras, raised in Chicago. I
3 live on the east side of town.

4 Education, I'm still pursuing my degree in
5 administration of justice.

6 I'm married. I have two step-kids. My
7 wife's occupation is teacher's assistant.

8 Employment, I work for the U.S. Border
9 Patrol. I've been there eight years.

10 Interests and hobbies, I enjoy making my own
11 home brew and spending time with my family.

12 And I have never served on a jury before.

13 THE COURT: Okay.

14 Judge Ferraro.

15 PROSPECTIVE JUROR: My name is Tom Ferraro.
16 I was born in Tulsa, Oklahoma and raised in Kansas and
17 came to Arizona and went to college.

18 I have a juris doctorate degree.

19 I'm married. I have two children. They're
20 adults. 26 and 30.

21 I'm employed as a judge in the federal court
22 across the street.

23 I like to -- well, my hobbies are golf. I'm
24 not very good at it. I enjoy it.

25 I have served one time on a civil case. I

1 was an alternate juror. That was decades ago.

2 THE COURT: Okay. Thanks, Judge.

3 Ms. Martin.

4 PROSPECTIVE JUROR: My name is Judy Martin.

5 I was born in Caledonia, Minnesota.

6 My education is high school plus.

7 As a retired LPN.

8 I'm married. And we have three children 44,
9 40 and 35. We have ten grandchildren, which keeps me
10 busy.

11 THE COURT: If you don't mind telling us,
12 what are their names and dates of birth?

13 PROSPECTIVE JUROR: I'm too old to tell
14 that.

15 THE COURT: Okay. We'll pass on that.

16 PROSPECTIVE JUROR: Okay. Where was I? I
17 have ten grandchildren.

18 Yard saling and I like music.

19 And I don't have any prior jury.

20 THE COURT: Okay. Thanks.

21 Ms. Wiley.

22 PROSPECTIVE JUROR: My name is Margaret
23 Wiley. I live on the southeast part of town over by DM.

24 I have had some college courses.

25 I am married. My husband works at

1 Davis-Monthan in the IT department.

2 I have no children.

3 I am employed by Lutheran Social Services as
4 their billing specialist.

5 Interests, I read a lot voraciously and I do
6 video games.

7 No -- I've been called several times, but no
8 jury service.

9 THE COURT: Okay. Thank.

10 Mr. Johnson.

11 PROSPECTIVE JUROR: My name is Thomas
12 Johnson. I was born in Oak Harbor, Washington. Moved
13 here -- well, I moved to Arkansas where my family
14 originated from. I was raised there. Moved here about
15 seven years ago.

16 I'm currently in school now.

17 I'm married. I have two kids. My wife
18 works at Marshall's as a sales associate.

19 Right now I work for FedEx part time.

20 My interests include anything that's
21 outdoors, anything that gets my adrenalin flowing.

22 I was selected for prior jury service, but
23 due to I was active duty military, I didn't go.

24 THE COURT: So do you drive for FedEx?

25 PROSPECTIVE JUROR: No, sir. I'm a package

1 handler.

2 THE COURT: Oh, okay, because I was reading
3 something about FedEx and how they always try to save
4 money. And they have devices on all their vehicles that
5 tell them how often the vehicle backs up, how far they've
6 gone in reverse, when they stop, when they turn right or
7 left, and they log all that stuff. And if the drivers go
8 in reverse too frequently, they get told that, Hey, you're
9 not supposed to back up this vehicle. Is that right?

10 PROSPECTIVE JUROR: I don't know.

11 THE COURT: You don't know that?

12 All right. Ms. Thibault.

13 PROSPECTIVE JUROR: My name is Irma
14 Thibault. I was born in Canada, raised in Massachusetts.
15 Moved here five and a half years ago in Green Valley.

16 Education 12 year plus.

17 I'm divorced.

18 I worked in a credit union for 30 some odd
19 years.

20 No children.

21 Hobbies, I'm an avid reader, mysteries.

22 And I've been called for jury service
23 several times, but never served.

24 THE COURT: So do you figure them out before
25 you get to the end of the book?

1 PROSPECTIVE JUROR: Generally, yes.

2 THE COURT: Me too. All right. Anything at
3 all that you know about yourself that we haven't talked
4 about that you think might interfere with your ability to
5 be fair and impartial? You're thinking why is that guy
6 asking me this or neither of these lawyers are 38(e)
7 students or Mr. Yates wants me on this jury.

8 Anybody feel that way about themselves?

9 Okay.

10 Deborah, do you have any questions you want
11 to ask the group or any individuals?

12 MS. LEE: I just have a couple, Your Honor.

13 THE COURT: Go ahead.

14 MS. LEE: Good morning. I just had a couple
15 follow-up questions specific to the answers that you gave.

16 So Mr. Johnson, you stated that you had a
17 cousin that was convicted of did I hear correctly human
18 trafficking?

19 PROSPECTIVE JUROR: Yes.

20 MS. LEE: Was that here in Pima County?

21 PROSPECTIVE JUROR: No. It was in Texas
22 where he was convicted.

23 MS. LEE: Okay. And the reason why I ask is
24 because I handle those cases. I just wanted to make sure.

25 And I believe everybody else stated that

1 themselves or their friends or family members were
2 convicted of mostly burglaries, thefts, those types of
3 crimes. But just to be safe, is there anyone here who was
4 a victim or had a close friend or family member who was a
5 victim of any type of sexual offense that you haven't
6 mentioned before?

7 THE COURT: Ms. Lopez.

8 PROSPECTIVE JUROR: Yes. My neighbor's
9 children were molested, but they were under -- all under
10 ten years of age.

11 THE COURT: Is there anything about that
12 situation that would interfere here? This alleged victim
13 is an adult.

14 PROSPECTIVE JUROR: I know. No, if it's an
15 adult, I don't have a problem.

16 THE COURT: Mr. Ageh.

17 PROSPECTIVE JUROR: My sister was raped.

18 THE COURT: Is there anything about her
19 situation that would interfere here in any way?

20 PROSPECTIVE JUROR: No.

21 THE COURT: No?

22 Anybody else?

23 Okay. Go ahead.

24 MS. LEE: And, Mr. Ageh, if I may just
25 follow up. Was there anything about the treatment of your

1 sister during the criminal process that affected you
2 negatively or in any way?

3 PROSPECTIVE JUROR: She never prosecuted her
4 abductor.

5 MS. LEE: Okay. Thank you.

6 Oh, there was one more. Mr. Randall, you
7 stated that you -- or maybe you didn't. Did you state
8 that you were called as a juror before?

9 PROSPECTIVE JUROR: No.

10 MS. LEE: Okay.

11 Mr. Edwards, you stated that you served as a
12 juror. It wasn't a criminal case?

13 PROSPECTIVE JUROR: No.

14 MS. LEE: So it was a civil case?

15 PROSPECTIVE JUROR: Yes.

16 MS. LEE: Just to be sure, anyone else
17 served on a criminal jury case that you did not mention
18 before?

19 Okay. Thank you.

20 And then I wanted to ask if -- I'm going to
21 assume that a lot of you watch those Law & Order type
22 shows on TV, CSI, First 48 Hours, those kind of things.
23 If you do watch those shows, is there anyone here who has
24 an expectation of the type of evidence that you will be
25 presented with in this case based on what you've seen on

1 TV?

2 THE COURT: In other words, do any of you
3 think that stuff is real?

4 MS. LEE: Even if you don't think that
5 that's real, do you feel that it shaped your expectation
6 of what it's going to be like to sit as a juror on this
7 case in any way?

8 No, I see no hands. All right. That's all
9 I have for you. Thank you.

10 THE COURT: John?

11 MR. SANDO: Thank you.

12 Good morning. I just have really a general
13 question. We talked about victim's rights, defendant's
14 rights, civil rights, but nobody ever talks about juror's
15 rights. You have the right to deliberate. That means you
16 all go in there and you talk about facts of the case and
17 try to reach a consensus if you can.

18 Unfortunately in some cases some people are
19 cajoled or cowed or intimidated for a long time into a
20 verdict.

21 You each have to separately use your own
22 conscience in deliberating this. Now, as sometimes it
23 happens, somebody -- have you ever seen the movie 12 Angry
24 Men, 11 men against one after two hours, they all agree to
25 a not guilty.

1 But in the initial stages Henry Fonda is
2 intimidated by the other jurors that they have to get on
3 and go to a baseball game. Well, he's black, you know,
4 he's guilty. We don't have time to mess with this. The
5 eyewitness was clear. And they tried to intimidate him.

6 Now, if any of you are in the room and
7 everyone is trying to talk you into a verdict, just for
8 the sake of getting along, would any of you go to convict?

9 Well, let me ask it more specifically.
10 Let's say, Ms. Wiley, if you were in the jury room and
11 other people were pressing you or another person into a
12 unanimous verdict one way or the other, would you allow
13 that to happen?

14 PROSPECTIVE JUROR: I would try not to, yes.

15 MR. SANDO: The Judge also asked you about
16 whether or not a defendant testifies. You recall there
17 was two remarks in here where people that were excused.
18 Well, I have a feeling or an instinct that he should
19 testify. It's one of the most viable rights in the
20 criminal law that a defendant never needs to testify. The
21 Judge has told you this. All the evidence, all the burden
22 rests on the State.

23 One last time, is there anyone -- there's
24 various reasons why a person would testify, but they don't
25 have to because the burden is on the State. Is there

1 anyone here having thought about that might have that come
2 into your deliberations and your thought processes if he
3 doesn't testify?

4 Thank you very much.

5 THE COURT: Does the State pass the panel?

6 MS. LEE: Yes.

7 THE COURT: And the defense, John?

8 MR. SANDO: May we approach?

9 THE COURT: Sure. Come on up.

10 (The following proceedings held at sidebar.)

11 MR. SANDO: I think he should be struck for
12 cause.

13 THE COURT: Motion denied. Court finds that
14 he can be a fair and impartial juror based on his
15 responses to Court's question.

16 Anything else?

17 MR. SANDO: No.

18 (The following proceedings held in open
19 court.)

20 THE COURT: All right. So now you pass the
21 panel?

22 MR. SANDO: Yes.

23 THE COURT: All right. So when I ask the
24 lawyers if they pass the panel, what I'm asking them is do
25 they think that all 21 of you could be fair and impartial,

1 and they said yes.

2 So here's what's going to happen. They get
3 to make what we call peremptory challenges, strikes. Each
4 side gets six peremptory challenges. So 12 of you will be
5 excluded. And the nine of you that remain will be our
6 trial jurors.

7 Do you think you'll finish that by noon or
8 do you need more time?

9 MS. LEE: I might need a little more time.

10 THE COURT: All right. So we'll go ahead
11 and break now for lunch. And those of you whose names
12 weren't called yet, you need to come back as well. So if
13 everybody can come back at 1:15. And we'll let you know
14 who among you are going to be our trial jurors, and then
15 the rest of you will be excused and then we'll continue on
16 with what we need to do.

17 So everybody please be back at 1:15. Wait
18 outside. And then we'll invite you back in when the time
19 is right. Okay? Thank you.

20 (The jury exited the courtroom.)

21 THE COURT: Show the absence of the jury.
22 Anything for the record before we break?

23 MS. LEE: No.

24 MR. SANDO: No.

25 THE COURT: Thanks. 20132931. Counsel are

1 present. Mr. Yates is present.

2 John, you're on your feet. Do you have
3 something to say?

4 MR. SANDO: Yeah. Judge, when you made that
5 ruling, it kind of caught me off guard since we didn't --

6 THE COURT: Which one? Because I --

7 MR. SANDO: About the strippers.

8 THE COURT: Oh.

9 MR. SANDO: I would ask the Court to
10 reconsider it. Now, when they brought in Maria Estrella,
11 they were claiming that there was -- there was a modus
12 operandi that he would meet strippers in a bar, offer them
13 free massages and offer them pills. That's why Maria
14 Estrella was allowed in. So he had met the victim in this
15 case in a strip bar. But that was the reason that Maria
16 Estrella's testimony was allowed in is because it showed
17 some sort of a common scheme. That's why it was allowed
18 in.

19 So if you remain with that ruling, the
20 reason for the ruling is because of the commonness of the
21 two actions according to the State even though they're two
22 years apart.

23 But if that's true, then I think Maria
24 Estrella's testimony should be excluded since the only
25 reason it was allowed in under Judge Griffin's ruling was

1 that it was a modus operandi of meeting strippers in bars,
2 offering them pills, offering them free massages.

3 THE COURT: Okay. Deborah, do you agree
4 that that was what Judge Griffin was thinking was the
5 basis for the 404(b)?

6 MS. LEE: Judge Griffin did not specifically
7 say that that was the only reason why he was allowing the
8 404(b) in. And my motion rests upon several theories and
9 several -- not theories. Several permissible purposes for
10 using 404. And I'll read it right here.

11 Evidence of defendant's other acts is
12 admissible under Rule 404 for the -- of the rules --
13 Arizona rules of evidence to rebut any argument that the
14 defendant's touching of the victim Meagan Marlborough's
15 vagina was a mistake, to rebut any claim that the
16 defendant lacked the requisite intent with respect to the
17 victim's lack of consent and as of evidence of the
18 defendant's plan.

19 THE COURT: What's Ms. Estrella going to
20 say?

21 MS. LEE: Ms. Estrella is going to say that
22 the defendant offered her free massages and free pills,
23 which is not identical to what happened to Ms. Meagan
24 Marlboro, but also that he had asked that she be his sex
25 slave.

1 THE COURT: All right. Did he ever touch
2 her inappropriately?

3 MR. SANDO: No.

4 MS. LEE: No. No. But this isn't 404(c).
5 This is 404(b).

6 THE COURT: Uh-huh.

7 MS. LEE: And another theory that I had
8 raised up to the Court and Judge Griffin specifically did
9 agree that this was admissible for this reason is that --
10 and there's case law on this -- that the -- a separate
11 victim who has no -- and they have no knowledge of each
12 other, having articulated an incident that corroborates
13 what the victim said happened with her is admissible under
14 404 as corroboration of the victim's testimony.

15 And so there were several reasons why I
16 asked the Court to allow this under 404(b). He did
17 specifically agree with me on that one on the record, not
18 in his minute entry. But he did not say that the only
19 reason why it is admissible is because of modus operandi
20 evidence.

21 MR. SANDO: Your Honor, the reason it was
22 allowed in is because of -- let me -- Maria Estrella is
23 not a victim. There was no crime. There was no crime
24 charged. It's indirect evidence.

25 And the reason it got in was because the

1 State's contention is that he goes to strip clubs, he
2 meets strippers. No sex. Free massages and pills.
3 That's it. And so if --

4 THE COURT: I get it now.

5 MR. SANDO: -- you're not going to allow me
6 to --

7 THE COURT: I get it. So -- all right. So
8 how about we do this. It's a compromise. That
9 Ms. Marlboro works at -- I don't know what you want to
10 call it. A gentlemen's club or whatever.

11 MR. SANDO: That's what she called it.

12 THE COURT: The Raiders Reef. And that's
13 where Mr. Yates met her, but not what she does there
14 because then she could be a waitress, she could be any
15 number of things. So she's not a dancer or whatever
16 they're called. But that she works at Raiders Reef. And
17 that's a gentlemen's club. And that's where Mr. Yates met
18 her. I'll go that far.

19 MR. SANDO: Well, there will also be
20 testimony from Maria Estrella that he came in three, four
21 times a week and offered free massages to all the other
22 girls. But the alleged victim is not -- was not working
23 there at the time of this incident, but she had met him
24 there.

25 THE COURT: Oh, okay. Wait. Let me think

1 this through.

2 Go ahead.

3 MS. LEE: The only connection that Raiders
4 Reef has to this entire case is that that's where they
5 met. Nothing happened there. Nothing --

6 THE COURT: And she wasn't even employed
7 there at the time?

8 MS. LEE: She was employed at the time.
9 That's how they met. But the actual massage that's of
10 concern --

11 THE COURT: No, I understand that. Happened
12 at her home?

13 MS. LEE: Right. And she quit by the time I
14 believe that this incident occurred. She was no longer
15 employed there.

16 THE COURT: But I thought someone said that
17 Mr. Yates had given her four or five massages in the past
18 before this occurred.

19 MS. LEE: Yes.

20 THE COURT: And that's while she was still
21 working there?

22 MR. SANDO: I'm not sure of that.

23 MS. LEE: Yes.

24 THE COURT: Okay. All right. So that he
25 met Ms. Marlboro at Raiders Reef. Raiders Reef is a

1 gentlemen's club. And that's where they met. Okay.
2 We'll leave it at that.

3 MS. LEE: And to be clear, there's going to
4 be no mention that she was a dancer or --

5 THE COURT: Right.

6 MS. LEE: Okay.

7 THE COURT: That she was employed there.
8 And if one of the jurors asks well, what did she do there,
9 what was her job, we'll say we can't answer that question.
10 What she did there is not relevant. And if it is, the
11 probative value doesn't outweigh the --

12 MR. SANDO: I agree that it's not relevant
13 but for the 404 evidence that they tried to bring this
14 in --

15 THE COURT: No, I get it now. So that's my
16 ruling. So she was employed at Raiders Reef when he first
17 met her. That Raiders Reef was a gentlemen's club or, you
18 know, there's -- I don't know exactly -- whatever they
19 call them. But no mention of what her job was there, that
20 is, Ms. Marlborough's job.

21 MS. LEE: And if a juror does ask that
22 question, Your Honor, would it be possible to answer
23 saying that that is irrelevant so that they don't guess as
24 to why we cannot answer it?

25 THE COURT: I'll deal with it.

1 MS. LEE: Thank you.

2 THE COURT: Now, what about the -- I asked
3 you guys to think about the defendant's statement to the
4 police, you know, if you're going to use it. You said you
5 had a bunch of redactions. I don't know what they were.
6 If they were to --

7 MS. LEE: Your Honor, I --

8 THE COURT: -- temper whatever information
9 there was about Mr. Yates or what. To protect him from
10 prejudice.

11 MS. LEE: There are several comments that
12 the defendant makes about conditions he's been diagnosed.
13 So basically he says that he's impotent.

14 THE COURT: Oh.

15 MS. LEE: Has no sexual drive. Been
16 diagnosed with a whole slew of illnesses and is on all
17 sorts of medication. And that's when Judge Griffin said,
18 Well, that's not coming in unless they're calling a doctor
19 who's an expert.

20 There's also several other things that --
21 most of it's dealing with that. And then there's comments
22 about an allegation that the victim did private dances at
23 her home. There's no evidence to that.

24 There are some comments that weren't
25 addressed in the motion in limine, but just clearly are

1 irrelevant. For example, the fact that the defendant --
2 the victim's home, there was a gun that the defendant saw
3 there. And he goes on through several pages talking about
4 this gun. Mr. Sando was objecting to that because they
5 didn't raise it in a previous motion in limine, but I just
6 don't think it's relevant.

7 And then there are also other things that I
8 feel that the defendant wouldn't want in because they talk
9 about acts that he's not charged with. I'm surprised that
10 they want the entire thing in because they're -- I mean he
11 admits to taking photographs of women who were sleeping in
12 semi nude poses. These are things that I wasn't intending
13 on getting into unless the door is open somehow.

14 But there's clearly redactions that need to
15 be made. And so I tried to get a stipulation --

16 THE COURT: John?

17 MR. SANDO: There's nothing in here that she
18 says that might be prejudicial to him. What she's
19 claiming here is the word impotent.

20 Judge Griffin said, I don't want to hear anything about
21 impotency if it's hearsay. There won't be any hearsay.
22 So we start here --

23 THE COURT: So your interpretation of what
24 Judge Griffin said was that nobody else could testify
25 about him being impotent.

1 MR. SANDO: However --

2 THE COURT: He told Joe that he was
3 impotent, that kind of thing.

4 MR. SANDO: However, he says, My drive is
5 basically nonexistent. That's admissible I think. Right
6 after that. And for a better word, impotent. That I can.
7 That should be stricken under Judge Griffin's ruling.

8 But lack of sex drive, lots of people have a
9 sex drive where the spirit is willing and the flesh is
10 weak. And just because you're impotent doesn't mean you
11 don't have a sex drive. And just because you have a sex
12 drive doesn't mean -- they're two different things is what
13 I'm saying.

14 But I'm not going to get -- I think that
15 part of page 4 there about him being impotent is -- it's
16 admissible. But he just ruled that I don't want to hear
17 any testimony of impotency to the extent it is hearsay.
18 And the rest of this thing is about drug use or whatever.
19 It's not hearsay, but I think you can deal with that as we
20 go along.

21 THE COURT: Well, I don't know how we can do
22 it as we go along unless --

23 MR. SANDO: If I could point out, Your
24 Honor, it says in his ruling April 8th, It is ordered that
25 this portion of the motion is granted -- that's about

1 references to impotency -- to the extent it deals with
2 hearsay.

3 THE COURT: Were you -- Deborah, were you
4 planning on playing or just asking question and answer?

5 MS. LEE: I'm not sure yet because --

6 THE COURT: If it's question and
7 answer --

8 MS. LEE: Right.

9 THE COURT: -- it would be easy.

10 MS. LEE: I understand that. And right now
11 I just -- I wanted to get it clear so that in the case
12 that I do end up playing the statement, we could get the
13 redactions done and everything. And at this point I can't
14 say one way or another if I'm going to actually play it or
15 just have the detective, you know, tell us what he said.

16 THE COURT: Okay. So how about I give you
17 15 seconds to decide? Because I don't know -- you know,
18 maybe you're not going to do it until tomorrow, but --

19 MR. SANDO: I wouldn't do it until tomorrow.

20 THE COURT: But, you know, I have to rule on
21 these things. And if you were just going to ask question
22 and answer and then John would ask question and answer,
23 then it's easy for me to deal with it because -- and you
24 don't have to redact something. I don't know unless
25 somehow you think that the defendant's voice is real

1 important for the jury to hear while he was talking to the
2 police.

3 MS. LEE: There are significant pauses with
4 certain questions. I mean there aren't that many
5 redactions, Your Honor. And I think that -- I don't know.
6 I mean I tried. And at this point I really can't say.
7 I'm hoping that I will not have to play them. I'm hoping.
8 But I don't want to be limited and precluded from doing
9 that.

10 THE COURT: So let me say this then. If you
11 are going to play the CD, we will not waste not one second
12 trying to decide what's going to be played and what's not
13 going to be played.

14 MS. LEE: Yes.

15 THE COURT: So you guys either need to work
16 this out or let me rule on it well before the time comes
17 for it to be played or you decide. So what I suggest is
18 that you need to decide this evening what you're going to
19 do and let me know first thing in the morning so that I
20 can deal with this. And then you can have someone do the
21 redactions if that's what you're going to do.

22 MS. LEE: I'll do that, Your Honor.

23 THE COURT: But like I said, it just seems
24 to me the easiest way is just do question and answer.

25 All right. Anything else?

1 All right, Ben.

2 THE BAILIFF: Jury entering.

3 (The jury entered the courtroom.)

4 THE COURT: Welcome back. We're back on the
5 record. 20132921. Mr. Yates is present. Counsel are
6 present. All the prospective jurors are present.

7 Erin's going to call the names of the nine
8 of you who have been selected to sit as jurors. If your
9 name is called, come on up and Ben will show you where to
10 sit.

11 THE CLERK: Bryan Goldkuhl. Steven Edwards.
12 John Macko. Shawna McKee. Courtney Latham. Jeffrey
13 Brown. Judith Martin. Thomas Johnson. Irma Thibault.

14 THE COURT: Ladies and gentlemen, for those
15 of you whose names weren't called now or ever, thank you
16 very, very much for participating. I appreciate it.

17 If you'd all please go back downstairs to
18 the jury commissioner and check in there, see if they need
19 you for anything else. Okay? Thank you.

20 Would the nine of you stand and be sworn as
21 trial jurors for me, please.

22 (Jury panel sworn.)

23 THE COURT: Okay. Have a seat. I'm going
24 to go over some preliminary instructions with you all now.
25 The preliminary instructions are contained in those black

1 notebooks that you've been given, so you can follow along
2 if you like or you can just listen, whatever you prefer.
3 If you want to follow along, they start on the third page
4 where it says introduction.

5 To help assure a fair trial, you're required
6 to follow the Court's instructions. You'll be given
7 preliminary instructions at the beginning of the case,
8 which is what we're doing now, and then additional
9 instructions after you've heard all the evidence. If you
10 have any questions about the instructions, just let me
11 know and I'll try to clarify those questions for you.

12 The rules that govern your time as jurors
13 I'll refer to during the trial as the admonition. So when
14 we take a break later this afternoon, I'll ask you to
15 remember the admonition. When we take our evening recess,
16 remember the admonition. It's just a reminder to you to
17 remember what we're talking about now.

18 So you're to keep an open mind. You're not
19 to form any opinions until you've heard all the evidence,
20 the final instructions and the closing arguments.

21 You're not to discuss the case with anybody.
22 What that means is that you may not discuss the case with
23 each other until you actually go back into the jury room
24 and deliberate. You may not talk about the case with
25 anybody else. So when you go home, you can tell whoever

1 it is, I'm on jury. I'll be here until Thursday, maybe
2 Friday. But, you know, I promised -- not Friday.
3 Thursday. But don't even tell them what the case is
4 about.

5 After the case is over, after you're excused
6 as jurors, then you can talk with whomever you like about
7 the case as much as you want to. But until that time,
8 you're not to talk to anybody about the case.

9 You're to avoid contact with the lawyers and
10 parties and witnesses. Sometimes when you're coming in
11 and out of the courthouse or you're on the floor here, you
12 might bump into one of the witnesses or Mr. Yates. Do not
13 engage them in any conversation. They're going to kind of
14 ignore you. Not because they're unfriendly. It just
15 because they want to avoid even the appearance of
16 impropriety. You talking to them, them talking to you
17 would be improper. So don't do that.

18 In the front of the notebook if you'll look,
19 you'll see there's a badge that says juror on it. Take
20 your barcode badge off and put it in the front and then
21 wear the badge that says juror while you're in and around
22 the courthouse. So leave it on until you get out of the
23 building this evening. Put it back on tomorrow morning.
24 Put it on now. Put it back on tomorrow morning before you
25 get back into the building.

1 And you keep that on while you're on --
2 obviously not when you're at home unless you want to, you
3 can. But when you're in and around the courthouse, leave
4 that on so people know that you're actually a juror on a
5 case rather than a prospective juror. And then police
6 officers, people like that won't talk about any case while
7 they see you around.

8 Don't conduct any independent investigation
9 when you learn any of the places where things may or may
10 not have happened. Don't go looking for yourself. If one
11 of these areas is on your way home, don't stop and inspect
12 it for yourself.

13 Don't look anything up on the Internet about
14 sexual abuse or anything like that. Don't look up any
15 words in the dictionary. I'll give you all the
16 information you need, legal stuff so you can make an
17 intelligent decision about the case once you figure out
18 what the facts are. So don't do any homework.

19 I don't think there'll be any media coverage
20 of this case. But if there is, don't watch, listen to or
21 read anything about it.

22 In the front of the notebook -- oh, you've
23 taken yours out already. No, that's okay. It can fall
24 out. The envelope that you see, when you look inside,
25 you'll see there's a couple of pads of paper and a pen.

1 So we provide that so you can take notes during the trial
2 on the little legal pad.

3 Even though Nichole takes down everything
4 that's being said, transcripts will not be made available
5 for you when you deliberate, so don't expect that you'll
6 be able to read someone's testimony. You take as many
7 notes as you think you need to help you remember what's
8 important.

9 During the trial you may not share your
10 notes with one another because that's kind of like talking
11 with one another. But when you deliberate, you'll be able
12 to share your notes with one another. So you'll be able
13 to use your individual memory, your collective memory,
14 your notes and so forth so that you can deliberate about
15 the case.

16 What's going to happen in a couple minutes
17 is Ms. Lee's going to go ahead and -- Deborah's going to
18 go ahead and make an opening statement, and then John can
19 make an opening statement unless one of his students is
20 going to do that. I don't know.

21 But in any case, each party gets to make an
22 opening statement. That's the opportunity that they're
23 given to give you an overview of what they expect you're
24 going to be hearing and seeing during the trial. It is
25 not the time that they argue their case to you.

1 After the opening statement, the State will
2 put on its evidence. Remember what I said, that the
3 defense doesn't have to put on any evidence, but they
4 might. If the defense puts on any evidence, the State has
5 the option of presenting what we call rebuttal evidence.

6 Every witness who testifies will be subject
7 to direct examination, cross-examination and redirect
8 examination.

9 After you've heard and seen all the
10 evidence, I'll go ahead and I'll instruct you, tell you
11 what the law is. And then you'll hear final arguments.
12 And that's what it is, argument. That's when the lawyers
13 talk to you and they try to convince you of their
14 respective positions.

15 And then you'll go into the jury room and
16 you'll deliberate. If you reach a verdict, we'll bring
17 you back out. And Erin or Jake might be here tomorrow,
18 but the clerk will read the verdict in the presence of all
19 the parties.

20 As jurors you have two major duties. One is
21 to determine the facts. The other is to reach a verdict
22 by applying the law to the facts.

23 Am I going slow enough for you, Nichole?

24 THE COURT REPORTER: You're fine.

25 THE COURT: Okay. She's a real martyr.

1 Court reporters like to hear people talk at about 220
2 words a minute. That's real comfortable for them. I was
3 probably doing about 300 just now. But Nichole knows me
4 and my cadence and so forth, so -- and she's good. So she
5 gets -- she gets to do 300 a minute.

6 All right. So as I said, you have two major
7 duties. One is to determine the facts. The other is to
8 reach a verdict by applying the law to the facts.

9 In fulfilling these duties, don't be
10 concerned with any opinion you think I might have about
11 the facts because it doesn't matter what I think. I'll
12 take care of the legal stuff that comes up. You decide
13 what the facts are.

14 Also you mustn't be influenced by sympathy
15 or prejudice. And in the event that Mr. Yates is
16 convicted of anything, you are not -- well, even if he's
17 not convicted, you are not to consider possible
18 punishment. That's left up to the Court if there's a
19 conviction. Jurors don't have any participation in that
20 part of the process.

21 You have to determine the facts from the
22 evidence produced in court. So the evidence is the
23 testimony of witnesses, exhibits that are offered and
24 admitted by the Court and stipulations.

25 Stipulations are agreements between the

1 parties. They haven't told me yet whether there are any
2 stipulations. But if there are, then I'll tell you about
3 that and I'll explain it to you.

4 Evidence does not include what the lawyers
5 say. What the lawyers say might help you to understand
6 the law and the evidence, but what the lawyers say is not
7 evidence.

8 If I sustain an objection to a lawyer's
9 question, you're to disregard the question and any answer
10 that might have been given. If I order certain testimony
11 stricken from the record, then that's not testimony for
12 you to consider. If I don't allow a particular exhibit to
13 be admitted into evidence, then that exhibit's not
14 evidence for you to consider.

15 It's up to you. We talked about this in the
16 voir dire, in the jury selection. It's up to you to
17 decide what testimony to believe and how much weight to
18 give it with credibility of witnesses.

19 So I suggest that you among other things
20 take into account the witness's ability and opportunity to
21 observe. Their memory and manner while testifying. Any
22 motive or prejudice they might have. Any inconsistent
23 statements they might make. Consider each witness's
24 testimony in light of all the evidence in the case.

25 Now, the rules of evidence, that is, the

1 rules that tell me what you get to hear and see ordinarily
2 do not permit the opinion of a witness to be received as
3 evidence, but there's an exception to that rule. A
4 witness can give an opinion on a subject upon which the
5 witness has become an expert because of education, study
6 or experience. So if you hear an expert opinion in this
7 case, you give it the weight that you believe it deserves.

8 In criminal cases like this, jurors are not
9 permitted to ask questions directly of the witnesses. We
10 leave that up to the lawyers. So as you sit here, clearly
11 questions will come to your mind. And that's good. We
12 have a mechanism that has been set up -- what is it? I
13 don't ask Deborah because she hasn't been around that
14 long, but John has. What, 20 years now our Supreme Court
15 lets jurors ask questions.

16 And it works this way. Before I excuse a
17 witness, I'll ask you do you have any questions of this
18 witness? If you do, then you'll write the question down
19 on one of the white pieces of paper that's in your little
20 envelope there. Raise your hand. Ben will collect it.

21 I'll take a look at it. I'll show it to the
22 lawyers. If the question can be asked, I'll ask it for
23 you. Sometimes I rephrase it a little bit. But I'll ask
24 it for you.

25 If it cannot be asked, then it won't be, and

1 you're not to guess what the answer to the question might
2 have been.

3 So what all of us would like you to do is
4 ask as many questions as you have. Don't be shy about
5 that. And we'll try to answer as many as we can.

6 As I said earlier, the law doesn't require
7 Mr. Yates to prove his innocence because he's presumed by
8 law to be innocent. So that means the State must prove
9 each element of the offense beyond a reasonable doubt.
10 The burden of proving the defendant guilty beyond a
11 reasonable doubt rests with the State. That burden does
12 not change during the course of the trial. If the State
13 doesn't meet that burden, then you find Mr. Yates not
14 guilty.

15 And similarly, the Indictment, the
16 accusation is not evidence against Mr. Yates. And of
17 course you mustn't think he's guilty just because he's
18 been accused. Obviously you know that.

19 Look in the back of the notebook and you'll
20 see there's a couple of white pages. So the first page is
21 a copy of the Indictment, the accusation. I read it to
22 you earlier. I'm not going to read it again. But I do
23 want to remind you that Mr. Yates has pled not guilty to
24 the accusation.

25 The next is a preliminary instruction

1 concerning the elements of the offense of sexual abuse.
2 And it reads, A person commits sexual abuse by
3 intentionally or knowingly engaging in sexual contact with
4 any person 15 or more years of age without the consent of
5 that person.

6 Sexual contact means any direct or indirect
7 touching, fondling or manipulating of any part of the
8 genitals, anus or female breasts by any part of the body
9 or causing a person to engage in such conduct.

10 So at the end of the case I'll give you some
11 more definitions. Some of them are pretty obvious. Some
12 maybe not. But at least for now you understand what the
13 elements of the offense are.

14 And it'll help you if you follow along when
15 you start listening to the evidence. Okay?

16 So Deborah's going to talk to you for a few
17 minutes, then John will probably talk to you afterward and
18 then we'll start hearing from witnesses.

19 Deborah.

20 MS. LEE: This is a case about a man who had
21 a plan to sexually abuse a young woman. Not just any
22 woman, but a woman who was an easy target. A woman who
23 was young and perhaps a bit naive.

24 In this case the defendant's victim was
25 20-year-old Meagan Marlborough. Back in 2012 the

1 defendant met Meagan at her place of employment, a club
2 called Raiders Reef.

3 He struck up a conversation with her. And
4 when he learned that she struggled with some back pain and
5 suffered from back issues, the defendant offered to give
6 her a massage claiming that he was a professional
7 masseuse. You'll learn that that was a lie.

8 After that day, after the day that they
9 meet, they exchange contact information and start texting
10 one another and eventually they start to develop a
11 friendship of sorts.

12 The defendant offered her rides to places
13 like doctor's appointments, running errands. They hung
14 out a few -- on a few occasions at Meagan's home that she
15 shared with her then boyfriend, Stephen Sumner, and
16 watched a few movies. And when the defendant offered to
17 give her a free massage to help with her back pain, she
18 took him up on that offer.

19 Now, as Meagan got to know the defendant,
20 she thought he was a really nice guy. She thought he was
21 harmless. Just an older man who was perhaps a bit lonely.

22 She actually thought of him or saw him as a
23 father figure and told him so. She thought she could
24 trust him. But she was very wrong about the kind of guy
25 that the defendant was.

1 In October of 2012 the defendant came over
2 to her house to give her a massage. Stephen Sumner, her
3 boyfriend, was there, but he left shortly after. The
4 defendant handed her three pills claiming that they were
5 muscle relaxants. And after he believed that she had
6 taken them, he proceeds with the massage.

7 At some point during the massage Meagan
8 falls asleep briefly. And when she wakes up, she finds
9 that his hand is rubbing her vagina. Meagan is stunned
10 and shocked. Immediately tells the defendant to leave her
11 home.

12 You'll hear from Meagan during the course of
13 this trial and you'll also hear from Stephen Sumner who
14 walked in just as Meagan was waking up and discovering
15 what the defendant was doing.

16 A few weeks after this incident Meagan
17 called the defendant to confront him about what he had
18 done. She asks him, Why did you try to touch me while I
19 was asleep? And when she asked him that question, he knew
20 exactly what she was talking about. He didn't deny
21 touching her, but rather says or admits that he was
22 attracted to her and that he wanted to give her pleasure.

23 What the defendant didn't know, however, was
24 that that phone call was recorded. Detective Dobell of
25 the Tucson Police Department was assigned to this case

1 after Meagan had made her report to the police. And
2 Detective Dobell had coordinated with Meagan this
3 confrontation call. That's what it's called. And he was
4 there listening to the entire call and recorded it from
5 the beginning to the end, which is legal to do in a
6 criminal investigation.

7 This call is evidence of the defendant's
8 intent to touch Meagan where he did on her vagina and that
9 his intent was sexual in nature. This call is also
10 evidence that he knew that he did not have Meagan's
11 consent to touch her as he did.

12 Now, when Detective Dobell interviews the
13 defendant, the defendant denies ever touching her on her
14 vagina, denies ever giving her any pills. And when he's
15 confronted of the fact that hey, I was there during that
16 call, I heard what you said, and by the way, that call was
17 recorded, then the defendant does a pretty unconvincing
18 job of trying to think of excuses for why he said what he
19 said to Meagan in that call.

20 Now, because of what the defendant did that
21 night in October of 2012, he's been charged with
22 committing sexual abuse against Meagan Marlborough.
23 You've gone over the elements. And it's knowing or
24 intelligently -- knowingly -- intentionally or knowingly
25 engaging in sexual contact. So touching the vagina

1 without Meagan's consent. And that's what the evidence
2 will show that he did on that night.

3 Now, Meagan Marlborough had nothing to gain
4 by reporting this incident to the police. She simply made
5 this report so that if the defendant ever tried to do this
6 again with anyone else, her report would be evidence that
7 he had done that very same thing before.

8 Now, that's exactly what another young women
9 did back in 2011. You'll hear from Ms. Maria Estrella who
10 worked at another club in Tucson called Venom. And while
11 she was working here, the defendant approached her and
12 told her that he would give her free massages and free
13 pills, but that he wanted her to be his, quote,
14 subservient.

15 She didn't know what that meant, so she
16 asked him. And he said, Basically I want you to be my sex
17 slave. Maria made this report to the club managers the
18 day that this happened.

19 Now, this case is not a case about a mistake
20 or an accident or a misunderstanding by any stretch of the
21 imagination. This case is not about a kind hearted man
22 who is just trying to help out a beautiful young lady with
23 back problems out of the goodness of his heart.

24 This is a case about a man who had a plan to
25 sexually abuse a young woman and try to get away with it.

1 This is case about a man who was very intentional about
2 his victim selection. This is case about a man who had
3 only selfish intentions in mind.

4 He targeted a young woman who had back pain
5 offering to help with massages. He offered free rides to
6 a young woman who did not have a car. He won the trust of
7 this young woman and her boyfriend and made his way into
8 their home. And once in that home, he gave her pills,
9 waited for her to fall asleep, then sexually abused her
10 and thought that he could get away with it.

11 Ladies and gentlemen, at the end of this
12 trial after all of the evidence has been presented to you,
13 after you've had a chance to listen to Ms. Marlborough's
14 testimony, after you've had a chance to listen to the
15 confrontation call and all of the evidence together, the
16 State is confident that you will be firmly convinced of
17 the defendant's guilt and that you will hold him
18 accountable for his actions and find him guilty of sexual
19 abuse against Meagan Marlborough.

20 THE COURT: John?

21 MR. SANDO: The prosecutor has just told you
22 what she thinks the evidence is going to be in this case.
23 There's a lot she didn't tell you.

24 The first thing she tells you is that Meagan
25 Marlborough who met Mr. Yates at the Raiders Reef

1 gentlemen's club was an easy target and naive. She is
2 neither.

3 She didn't bother to tell you that Meagan
4 and Thomas and Stephen over the course of several months
5 became friends. He'd drive her around on errands. He
6 gave her massages for free at her apartment. Depending on
7 which one you believe, there were three, four or five.

8 These aren't just regular massages. These
9 are two-hour massages where Meagan would wear a bra and
10 panties and a towel over her. The rules were a full body
11 massage, but not breasts, butt or vagina.

12 On several occasions her boyfriend, Stephen
13 Sumner, was there. They also had a baby. And at least on
14 one or two occasions, he sat there and watched Thomas give
15 Meagan a massage, back, neck.

16 But on October 5th it was different. Now,
17 you got to remember something here. She asked for the
18 massages. He didn't ask to do it. She asked for the
19 massages because she said she had back pain.

20 And obviously it worked because she asked
21 him to keep coming back and back. After a while they
22 became what she called friends. Stephen Sumner said he
23 was our friend.

24 So we get to October 5th. Meagan and
25 Stephen are in their apartment. The son's in there. And

1 Tom comes over at 10:00 for the two-hour massage.

2 Stephen leaves with his son or the other
3 story is Stephen had to take the boy out the day before
4 because he was sick.

5 In any event, Stephen and the boy go out
6 around midnight for two hours. They come back. And as
7 he's opening the door, he hears, please get -- get off me.
8 He walks in. And this is where it gets interesting.

9 Meagan says he was lying on his left side
10 with his left thumb in her mouth and his right hand on her
11 crotch. At another interview -- by the way, she was
12 interviewed at least three times. At another interview it
13 was the right thumb and the left.

14 In one of the interviews he's on his left
15 side. Stephen said she was laying on her back and he was
16 on top of her. That's a large man to be laying on top of
17 someone.

18 And when he walks in, she grabs the towel.
19 We're not sure whether or not her top was off at that
20 time. And he says first, Get out of here, Tom. And he
21 does. What happened? Meagan says at some point, He
22 touched me over the underwear while I fell asleep.

23 Now, you heard something about these pills
24 that he's supposedly giving people to knock them out and
25 have sex with him. Meagan says there's two or three

1 pills. And she took them and she pretended to eat them.
2 Took them out in the kitchen and hid them.

3 So if she fell asleep, it had to be on some
4 other kind of drug than those drugs because those drugs
5 were taken by the police and analyzed by the lab. And
6 those pills had no poison and no narcotics in them. For
7 all we know, it was a sugar pill. There was a question
8 whether or not she got those pills from him.

9 What she also didn't bother to tell you is
10 when the police arrived on October 5th, Meagan's panties
11 are on the bed and collected as evidence. The evidence is
12 turned over to TPD crime lab. And guess what happens?
13 There's DNA on that underwear all right, but it's Stephen
14 Sumner's. There is no DNA from Thomas Yates. None.

15 You will hear evidence from a criminalist
16 that there was a Y-STR, unknown contributor. None of
17 it -- an unknown contributor, whatever that is, but it
18 wasn't Thomas Yates.

19 You have to start thinking about the timing
20 of this too. A two-hour massage. She supposedly falls
21 asleep. And she wakes up. Perhaps the stairs in the
22 apartment are a key in -- boyfriend walks in.

23 She was obviously in a compromising
24 position. And the police questioned her about this
25 extensively. You'll hear testimony from Detective

1 Aitchison, the interviewer the night it happened, October
2 5th, and what his impressions were.

3 And you're going to hear from Detective
4 Dobell that interviewed her another couple times. Says he
5 wanted to get the story straight and to wait for the
6 forensics on the DNA to come back.

7 What I want you to pay attention to here is
8 the different stories. In fact, the left thumb, right
9 hand you'll -- changed about a month ago when she called
10 up the prosecutor and said, I got a problem with this
11 transcript. They got the wrong hand, the wrong thumb
12 here.

13 Now, this is a year afterwards. If you pay
14 attention to these inconsistencies and the impossibility
15 of the positions and her motive, which somebody might have
16 opined maybe she was doing this to cover up because her
17 boyfriend was walking in, but there's again no DNA. The
18 pills were as far as we know sugar pills.

19 So what the prosecutor has done here is I've
20 got a weak case. I got to bring in something else. So
21 she brings in Maria Estrella.

22 Maria Estrella worked at another gentlemen's
23 club called Venom. And she will testify that he used to
24 come in very often. And what he would do is he'd sit
25 around, chitchat with the girls, offer them free massages,

1 which they'd take him up on. He'd give them free massages
2 in the place, in the establishment. And they all seemed
3 to like it. He never drank. He didn't even drink water.
4 He didn't smoke. And they all -- Maria will say, He never
5 showed any sexual interest in anyone. Meagan will say, He
6 never showed any sexual interest in me whatsoever.

7 So they're bringing this incident -- this
8 happened two years before where he meets a girl in a club.
9 She's going to say he offered her pills and offered her a
10 massage and said, can I be your sub? Nothing about a sex
11 slave. I'll do whatever you want for free. A sub.

12 And they're bringing this in to say somehow
13 that this shows that he sexually assaulted somebody two
14 years later, a statement. I can only imagine the
15 statements made by customers in these kind of
16 establishments that are made all the time.

17 He was never charged with it. There was
18 never a crime involved. It wasn't a criminal act. It was
19 an offhand comment that people make in these
20 establishments. And it can't be used as evidence that he
21 did in fact sexually assault -- intentionally sexually
22 assaulted her, had sexual contact. None of the witnesses
23 will testify that he had any sexual interest in anyone.

24 So what I'm going to do is ask you to listen
25 to the discrepancies of Ms. Marlborough and the

1 discrepancies between that and her other statements and
2 the discrepancies between those statements and Stephen
3 Sumners'. Then consider why Maria Estrella is even here
4 to testimony.

5 And then I want you to listen to the
6 forensic evidence for I just left my DNA right there.
7 There's DNA. Nora Rankin will testify to that. There's
8 no DNA on those panties, which means either she wasn't
9 telling the truth or she wasn't wearing panties.

10 So it's not time to get into all the details
11 of the lack of proof here, but I'd ask you to pay
12 attention to the different stories of her different
13 timelines of what happened that evening. And after you've
14 listened to this testimony, you're going to see that the
15 State hasn't come anywhere near close to bearing their
16 burden of proof that he did this act beyond a reasonable
17 doubt.

18 Thank you.

19 THE COURT: Deborah, you have a witness
20 ready?

21 MS. LEE: Your Honor, may we approach?

22 THE COURT: Yes.

23 (The following proceedings held at sidebar.)

24 MS. LEE: Could we take a brief recess? I
25 don't -- I want to motion to -- that --

1 THE COURT: Oh, all right.

2 (The following proceedings held in open
3 court.)

4 THE COURT: Ben we'll take a five-minute
5 break or so. I want Ben to show you where the jury room
6 is. And that's where you'll reassemble tomorrow morning
7 when you come back. And then after he tells you about
8 that and shows it to you, we'll get you back in, and then
9 we'll hear from the first witness.

10 So leave your notes, your notebooks here.
11 Ben will take you back to the jury room for a few minutes
12 and show you around. And then we'll get started with
13 testimony. Okay? Don't talk about the case.

14 (The jury exited the courtroom.)

15 THE COURT: Show the absence of the jury.

16 Deborah, you said that you needed to talk
17 with Ms. Marlborough about some of the Court's rulings and
18 then you mentioned something else.

19 MS. LEE: Yes. I want to put something on
20 the record, Your Honor. Based on defense counsel's
21 opening statement, I am concerned about the areas he's
22 going to try to go into. And this is exactly my concern
23 as to why the defense should be precluded from talking
24 about gentlemen's clubs at all in connection with my
25 victim. If Your Honor recalls, he just stated that these

1 kind of things happen in these establishments.

2 THE COURT: These kind of statements are
3 made.

4 MS. LEE: These kind of statements are made.
5 These kind of, you know, women are -- I'm not quoting
6 verbatim, but, Your Honor, he's definitely painting a
7 picture that there is something going on with my victim
8 and Mr. Yates and also putting her in a place where these
9 types of things or statements are made.

10 And I don't think that it's proper, Your
11 Honor. There is no reason why he needs to get into that
12 to support the theory of his case. There's no need at all
13 for the defense to be able to get into the fact that this
14 is a gentlemen's club at all to present the defense that
15 they're presenting, which is that he did not have any
16 sexual motivation.

17 If anything, the State would want to bring
18 that evidence in, but the defense has nothing to stand on
19 to say that they need to. And to say that they need to --
20 they need to be able to get into this because it's linked
21 with Maria Estrella, that's completely false, Your Honor.

22 THE COURT: Well, a couple things. One is
23 that I thought that Mr. Sando was really quite careful in
24 his opening statement not to violate the Court's ruling,
25 and he will continue to do so.

1 The second thing is -- and I understand what
2 you're saying. But the Court has instructed the jury and
3 will again that what the lawyers say in their opening
4 statements and closing arguments are not evidence. But I
5 understand what you're talking about is potential
6 prejudice.

7 What my recollection of what John said was
8 that he was talking about statements that are attributed
9 to Mr. Yates having made -- been made to Ms. Estrella.
10 And he said, And this is nothing unusual. These kinds of
11 statements are made in these kinds of clubs all the time.

12 I don't think that's objectionable frankly.
13 So you just continue to be careful not to violate the
14 Court's rulings.

15 MR. SANDO: I will, Your Honor. It's
16 just -- it's odd here that this is -- the State has
17 flip-flopped from originally saying that they're both part
18 of modus operandi and now they're saying it isn't.

19 THE COURT: Yeah, I understand. And of
20 course, you know, you have the option certainly of arguing
21 that well, why else does he go there but for sexual
22 interest if you want to. So let's see how it plays out.
23 But John will continue to be careful.

24 You've made your position known, and I
25 understand it.

1 MS. LEE: And then there's just one other
2 thing that he -- and please correct me if I'm wrong. But
3 I do recall the defense alluding to the fact that the
4 other detectives involved believe that there is something
5 else going on.

6 THE COURT: I didn't hear that.

7 MS. LEE: Okay. Maybe I --

8 MR. SANDO: No, I came close because they
9 did, and I think we're going to get into it. The ruling
10 from Judge Griffin is we can.

11 MS. LEE: No.

12 THE COURT: No.

13 MS. LEE: No.

14 THE COURT: Well, if it is, then I'm going
15 to overrule that because what the police state of mind is
16 is totally irrelevant. Totally irrelevant. Whether they
17 think it's a good case or a bad case, you know, an arrest
18 was made. The jury understands that. He's been indicted
19 by the grand jury. The jury may understand that. But
20 what the police thought about the whole situation is
21 totally irrelevant.

22 MR. SANDO: I agree.

23 THE COURT: And you're precluded from asking
24 any questions.

25 MR. SANDO: I agree what they thought about

1 it, but they kept asking her over and over could there be
2 another reason here. And Judge Griffin ruled that police
3 procedures and what they think and how they investigate is
4 admissible. But they let this sit on the back burner for
5 four months, and he precluded me from bringing that in.

6 THE COURT: That they --

7 MR. SANDO: They took a long time.

8 THE COURT: For four months? That's what --

9 MS. LEE: They were waiting on DNA, Your
10 Honor.

11 MR. SANDO: Yeah. And then the DNA came
12 back negative. I'll get into that too.

13 THE COURT: All right.

14 MS. LEE: But what concerns me about it if I
15 may briefly, Your Honor, is that I believe that Mr. Sando
16 wants to get into the fact that Detective Aitchison who
17 interviewed Ms. Marlborough first asked her on several
18 occasions if this is prostitution related.

19 Personally I think that's an inappropriate
20 question to ask. But I believe based on pretrial
21 interviews that Mr. Sando did with Detective Aitchison
22 that he's going to want to get into that. And that's
23 exactly why I --

24 THE COURT: But that's what's been
25 precluded.

1 MS. LEE: Right.

2 MR. SANDO: I can't bring up prostitution,
3 but anything else that Judge Griffin said I could. I'm
4 just not getting to what they thought regarding
5 prostitution. That's all.

6 THE COURT: All right. So John will ask a
7 question and you'll object if you think it's
8 objectionable. And I'll rule.

9 MS. LEE: Thank you. And I just wanted to
10 bring that up now because it's hard to unring a bell, Your
11 Honor.

12 THE COURT: Sure.

13 MS. LEE: I'm good now.

14 THE COURT: Okay.

15 MS. LEE: And if I could have a couple
16 minutes.

17 THE COURT: Yeah, go ahead.

18 THE BAILIFF: Jury entering.

19 (The jury entered the courtroom.)

20 THE COURT: You ready, Deborah?

21 MS. LEE: Yes.

22 The State calls Meagan Marlborough to the
23 stand.

24 MEAGAN MARLBOROUGH

25 The witness, after being sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LEE:

Q. Good afternoon.

A. Hi.

Q. Can you please introduce yourself to the jury.

A. My name is Meagan Kathleen Marlborough.

Q. How old are you, Meagan?

A. I'm 22 years old.

Q. Tell us a little bit about yourself starting with who you live with.

A. Right now I live with my mom and my son. He's three years old.

Q. And is that here in Tucson?

A. That is here in Tucson.

Q. And where did you grow up, Meagan?

A. New Jersey.

Q. And how long have you been living in Tucson for?

A. Ten years.

Q. Do you like it here?

A. Yeah, I do.

Q. Good.

What about your education, what was the highest grade that you completed?

A. 10th grade in high school.

Q. Meagan, I'm going to ask you a few questions

1 about things that happened in 2012.

2 A. Okay.

3 Q. So back in 2012, who were you living with?

4 A. I was living with Stephen and my son. He was my
5 fiancée at the time. Stephen Sumner.

6 Q. Okay. And the same son that you're talking about
7 that you live with right now?

8 A. Yes.

9 Q. And what's his name?

10 A. Stephen Brian Sumner, II.

11 Q. And before I go any further, have you ever
12 testified in court before?

13 A. No.

14 Q. Are you a little nervous?

15 A. Yes.

16 Q. What are some things that happen when you're
17 nervous that we'd know?

18 A. My face gets red. I shake. I'm twitchy, you
19 know. I fidget a lot. I say um, you know. Don't make a
20 lot of sense sometimes.

21 Q. Well, I want to make sure that the answers you
22 give are clear and that you understand my questions before
23 you answer them. So if you need time, that's okay to do.
24 If I ask a question that, you know, is a little confusing
25 for you, just let me know and I'll rephrase it for you.

1 Okay?

2 A. Okay.

3 Q. Back in 2012 when you were living with Stephen
4 and Stephen, Jr., did you meet a man by the name of Thomas
5 Yates?

6 A. Yes, I did.

7 Q. Do you see him in the courtroom today?

8 A. Yes.

9 Q. Can you point to him and describe an article of
10 clothing that he's wearing.

11 A. He's right there, and he's wearing a white
12 button-up shirt.

13 MS. LEE: May the record reflect that the
14 witness has identified the defendant?

15 THE COURT: Yes.

16 MS. LEE: Thank you.

17 BY MS. LEE:

18 Q. How did you meet the defendant?

19 A. I met him at the place I was working at.

20 Q. Okay. And was that Raiders Reef?

21 A. Yes.

22 Q. Did you guys talk when you first met that time?

23 A. Yes.

24 Q. And do you recall what kind of things you talked
25 about?

1 A. I told him that I have a back injury and chronic
2 pain. That I have a son. I told him about, you know, a
3 couple things about myself.

4 Q. And did he say anything specific to your back
5 pain?

6 A. He told me that he could help me, you know, make
7 my back feel better.

8 Q. And how did he offer to help you?

9 A. By giving me a massage.

10 Q. Did he tell you that it was just any old massage
11 or did he tell you that he was, you know, a professional
12 masseuse?

13 A. He told me that he was a professional masseuse,
14 that he was very educated in being a masseuse.

15 Q. So after that conversation, did you guys exchange
16 contact information?

17 A. Yes.

18 Q. Was it like e-mail addresses or phone numbers or
19 something else?

20 A. Phone numbers.

21 Q. Okay. You mentioned your back pain. What's the
22 cause or the source of that back pain?

23 A. My back is fractured. My back is technically
24 broken. And I have this thing called degenerative disk
25 disease, and it's genetic from my dad. But the injury in

1 my back, I fell out of a tree when I was younger and broke
2 my back.

3 Q. Is it something that you've been struggling with
4 for years?

5 A. As long as I can remember. Chronic every single
6 day, pain all day.

7 Q. Okay. So when the defendant offered to give you
8 massages, what did you think?

9 A. I thought I was lucky. I was lucky.

10 Q. Did you have -- had you ever had a massage before
11 in your life?

12 A. Never. Never had a massage before.

13 Q. So you guys exchanged phone numbers. And did you
14 contact each other after that first night that you guys
15 met?

16 A. Yes, we did.

17 Q. Okay. And tell us how your friendship if you
18 will kind of evolved from that point on.

19 A. Well, we were texting back and forth and, you
20 know, sometimes phone calls just getting to know each
21 other, you know, as regular people. And, you know, he
22 would go into the place where I worked, so I would see
23 him. And then, you know, became friends. Then it went
24 from there.

25 Q. Did you ever go any places with the defendant?

1 A. Yes.

2 Q. Tell us about that.

3 A. He took me to my doctor's. I had a pain
4 management appointment. He took me to get a shot in my
5 back. And he also took me to DES to get -- I had to renew
6 my food stamps and my health insurance.

7 Q. Okay. How did he end up giving you these rides?

8 A. Well, I asked him. I asked him and he also
9 offered to give me rides. I would tell him, Oh, I need to
10 go to DES today. I need to find a ride. He would offer
11 me a ride.

12 Q. Okay. And was there any sort of -- was it like a
13 favor? Did you pay him to give you a ride? What did it
14 look like?

15 A. It was clear that it was a favor. It was a
16 friendly favor.

17 Q. Was there anything else that you did together
18 with the defendant while you were getting to know him?

19 A. He watched a couple of movies or we watched the
20 three paranormal activity movies in one night. So the
21 movies as far as one night.

22 Q. And tell us about that. Where did that occur?

23 A. That was at my apartment where the incident
24 happened. And Stephen and my son were there.

25 Q. And how did that particular night come to be?

1 Whose idea was it, you know, and how did it come about?

2 A. It was his idea. He had the movies. I told him
3 that it was like a new one was coming out and said I
4 wanted to watch it. He said he had all of them, so he
5 would bring them over. And I said okay.

6 Q. So did you watch all three of them that night?

7 A. Yes.

8 Q. Did you like them?

9 A. Yes.

10 Q. Now, as you're, you know, getting to know him,
11 spending time with him, what was your impression of the
12 defendant?

13 A. I thought he was a very friendly person. He's a
14 good person. I looked up to him like a father figure. I
15 haven't had my dad in my life for a long time.

16 Q. Can you tell us a little bit more about that.

17 A. Well, my dad died a year and a half ago.

18 MR. SANDO: Objection, Your Honor. This is
19 irrelevant.

20 THE COURT: Sustained.

21 BY MS. LEE:

22 Q. So you said that you looked up to him as a father
23 figure. Can you tell us a little bit more about what you
24 mean.

25 A. He -- helping me with rides and just, you know,

1 caring about my well-being. You know, being a friend. I
2 looked up to him like a father figure, not -- you know,
3 not just like a friend. But he felt more caring towards
4 me like a family member, just a friend.

5 Q. When you say that he was -- he cared about you,
6 tell us what you mean. Like give us some examples.

7 A. Like offering the rides, you know. That was
8 something I struggled with, not having a car. So, you
9 know, that was helpful.

10 Q. Did you have a lot of other friends you can count
11 on for those kind of things?

12 A. No.

13 MR. SANDO: Objection. Irrelevant.

14 THE COURT: Overruled. She already
15 answered.

16 BY MS. LEE:

17 Q. Go ahead and answer.

18 A. No.

19 Q. What are some things that you learned about him
20 as you got to know him?

21 A. That he was disabled. That he didn't have very
22 many friends. That he lived with his family.

23 Q. There's water right there if you'd like some.

24 A. Okay.

25 Q. Did you grow to trust the defendant?

1 A. Yes, I did.

2 Q. Did you ever tell him that you looked up to him
3 as a father figure?

4 A. Yes, I did.

5 Q. Do you remember what he said to that?

6 A. No, I don't remember.

7 Q. Was there ever a time during the course of your
8 relationship or getting to know you period of your
9 relationship that your relationship was romantic in any
10 way with the defendant?

11 A. No, not at all.

12 Q. And you stated earlier that your boyfriend was
13 Stephen Sumner at that time?

14 A. Yes.

15 Q. During the entire period of time that you had
16 known the defendant, was Stephen Sumner your boyfriend?

17 A. Yeah. Actually we were engaged to be married at
18 the time. We were together from the time that I met him
19 until the time that we didn't talk anymore.

20 Q. Are you still with Mr. Sumner?

21 A. No, not now.

22 Q. Now, I'm going to shift gears now and talk about
23 the offer of massages that was made to you by the
24 defendant. At some point did you decide to take him up on
25 that offer?

1 A. Yes.

2 Q. And if you recall, do you recall if you were the
3 one that asked him or if he had offered it to you?

4 A. I don't recall.

5 Q. Okay. Were there any -- was there any type of
6 agreement regarding the massages, any stipulations or
7 anything like that?

8 A. He said that he needed some friendship. He was
9 lonely. He wanted companionship, you know, just someone
10 to hang out with him. And other than that, there was no
11 agreement to be paid at all.

12 Q. Did he make any comments about how he only gives
13 massages to his friends?

14 A. Yeah. He said that he, you know, doesn't give
15 them out to just anybody. It's people that are close to
16 him. He would give the same people massages over and over
17 again.

18 Q. Did he tell you one way or the other whether or
19 not this is something he liked to do for his friends?

20 A. He said that he liked it. He said that he was
21 professional and that was his passion.

22 Q. So there were -- there was no type of payment
23 arrangement or anything like that that the defendant
24 presented to you?

25 A. Not at all, no.

1 Q. Okay. So earlier you said that you had never had
2 a massage before in your life. Is that correct?

3 A. Yes.

4 Q. So tell the jury what these massages that were
5 performed by the defendant on you, what they looked like.
6 What were the rules? You know, what was the setup?

7 A. Well, you know, he was aware that I was with
8 Stephen. And, you know, I wasn't going to be
9 disrespectful toward Stephen either. You know, he was the
10 love of my life. So he was giving me a massage. It was
11 just automatic, you know, I was going to have my bra and
12 underwear on and a towel covering myself. I wasn't
13 wearing clothes so that it, you know, would be like a real
14 massage, but not naked. There was no -- never anything
15 like that.

16 Q. And is that something that the defendant required
17 you to have or --

18 A. That was -- that was my own. We didn't talk
19 about that. I just automatically -- you know, when it
20 came time the first time he gave me a massage, I just came
21 out with my bra and underwear on with a towel.

22 Q. Okay. How did you know to come out with your bra
23 and underwear? Did --

24 A. He told me to take my clothes off.

25 Q. Okay. Did he tell you -- I'm sorry. Is there

1 anything else, any other rules or any other things about
2 the setup that the defendant told you?

3 A. No.

4 Q. What about noise level?

5 A. Well, he -- it wasn't the first time. But after
6 the first time he talked to me about this. Told me that
7 when -- in his mind a professional massage is, you know,
8 perfect quietness, you know, just one on one people. A
9 professional massage, how it really is, you know, peace
10 and quiet, no interruptions, you know, because the point
11 of a massage is to be completely relaxed, you know.

12 Q. Did he say anything about his preference for no
13 one else being around and any reasons for that?

14 A. Yes. He kind of made it obvious that Stephen --
15 that he didn't want Stephen there. That he just wanted it
16 to be me and him and for it to be quiet and, you know,
17 like -- like how I thought a real massage was too.

18 Q. And did he ever make any references regarding
19 boyfriends being possibly jealous or anything like that?

20 A. Yes. He said that in the past he -- the reason
21 that he wanted it that way was because in the past he gave
22 a massage to a girl who had a husband, and he got jealous.
23 And he told me that, you know, people can get jealous and
24 it can cause, you know -- what's the word? Confident
25 issues.

1 Q. Like insecurities?

2 A. Insecurities. Insecurities.

3 Q. Okay. So after this conversation, after you guys
4 had this discussion, was Stephen asked to not be present
5 for the subsequent massages?

6 A. He wasn't specifically asked not to be there.
7 He just -- you know, he kind of made the impression that
8 he didn't want anyone to be there. He wanted to be quiet.
9 And then Stephen just wanted to -- Stephen likes to go on
10 walks. And since I was doing that, Stephen knew that's
11 how was it too, you know, so that I would feel good and my
12 back wouldn't be hurting so bad, you know, to be gone so I
13 could have that peace and quiet.

14 Q. Now, where did these massages take place?

15 A. At my apartment.

16 Q. And how did they get set up generally?

17 A. Well, he -- when I met him at my work, at the
18 work I used to work at, he offered them to me. And then,
19 you know, we exchanged numbers. Apart from leaving after
20 I met him, he told me, you know, let me know if you want a
21 massage. And then, you know, I had contacted him telling
22 him that I was interested.

23 Q. Did you ever offer anything to him in exchange
24 for the massages?

25 A. No.

1 Q. Did the defendant ever ask you before coming over
2 if Stephen was going to be there?

3 A. Yes, he did ask before if Stephen was going to be
4 there.

5 Q. Did he make any remarks about Stephen being
6 there?

7 A. Well, when Stephen was there, he kind of was
8 annoyed with Stephen being there. You know, not like
9 other times when he was over or with me when it was just
10 me and him. He seemed annoyed, and it seemed obvious that
11 it was towards Stephen.

12 Q. Now, it sounds like there was more than one
13 massage done by the defendant on you. Is that correct?

14 A. Yes.

15 Q. Do you recall around how many were done?

16 A. There was four.

17 Q. Is that four that you can recall or could it be
18 more or less?

19 A. It was four.

20 Q. Four? Okay. So do you remember what happened
21 during the first massage?

22 A. During the first massage I don't remember the end
23 of it because -- or well, not the middle of it. I can't
24 remember the middle of it because during that I passed
25 out. During the first massage, I passed out and I didn't

1 know why. I didn't even realize that I was passed out
2 until Stephen came in the apartment and woke me up.

3 Q. Tell us what you do remember.

4 A. After I woke up, Stephen was telling me that he
5 was scared that -- because he was shaking me to wake me
6 up. He said that I was never like that before. I was
7 really obviously passed out. I'm sorry.

8 THE COURT: You okay to go ahead?

9 THE WITNESS: Yes.

10 MS. LEE: We can take a break.

11 THE WITNESS: Let me answer this question at
12 least. Stephen said that he was scared by that because I
13 had never been asleep like that before. And when he came
14 in the apartment, he saw Thomas walking around the
15 apartment complex as if avoiding to run into Stephen while
16 he came into the apartment and saw me passed out like
17 that.

18 And in the beginning he brought me a bottle
19 of diet Pepsi that was open and it had a little bit out of
20 it. Like a drink -- drink out of it, but the rest of it
21 was full. And I was -- after all this, I was worried
22 that, you know, I was given something in that drink.

23 BY MS. LEE:

24 Q. But there's no evidence that you know of that
25 there was anything in that drink?

1 A. No evidence of that.

2 Q. All right. So the next time that you got a
3 massage, do you recall what happened?

4 A. The second time I got a massage, Stephen was
5 there. Stephen was in my apartment with us because after
6 that happened, Stephen was a little worried. He was like,
7 Well, you know, you can get the massage, but I want to be
8 there and see it just to make sure nothing is going on.
9 Stephen was there the whole time. There was no problems
10 whatsoever. It was just a normal massage. I was in my
11 bra and my underwear and the towel over me on my bed the
12 same exact way. And Stephen -- Stephen was there.

13 Q. And was also -- was part of the reason why
14 Stephen there also so that he could try to learn some of
15 the massage techniques from the defendant?

16 A. Yeah. That's exactly what he said too. He said
17 that he wanted to be able to do that for me.

18 Q. And when you say "he," are you talking about
19 Stephen?

20 A. Stephen, yes.

21 Q. Okay.

22 A. Stephen said he wanted to really do that for me
23 instead of me having someone else do it for me.

24 Q. And during that massage did you ever fall asleep?

25 A. That one, no. Second one, no.

1 Q. And how did it make you feel, the massage? Did
2 it feel good?

3 A. Yes, it felt really good.

4 Q. Did it help your back?

5 A. Yes, it did.

6 Q. What's the next time that you remember you
7 receiving a massage from the defendant?

8 A. The next time -- the next massage, that was the
9 third one. And Stephen was not there. That massage was a
10 little bit earlier in the nighttime. And it was just
11 me -- well, me, Thomas, Stephen and my son there when it
12 started. And then my son and Stephen went on a walk. And
13 he -- I had my massage then, and Stephen came back after
14 about 45 minutes because my son was sick. He threw up
15 when they were on the walk, and he had to bring him home
16 to clean him up and put him to bed. And Thomas left after
17 that. He didn't stay.

18 Q. Now, regarding the time when your son got sick,
19 in the past you were interviewed by several different
20 police officers in this investigation. Is that correct?

21 A. Yes.

22 Q. Okay. And do you recall telling at least one of
23 the officers that your son got sick on the last time and
24 not the second to last time?

25 A. Yes. Yeah, I remember saying that, yeah.

1 Q. Okay. So what caused you to say that?

2 A. I don't remember what caused me to say that, but
3 I just know that after I had a little bit of time to
4 remember all of what happened, I think it was just all the
5 excitement of it and being scared and having anxiety and
6 everything, you know, there was a lot of things that I had
7 problems with in the past like dates, you know, that I had
8 problems with.

9 Q. So back then are you saying that you were
10 confused when you said what you said?

11 A. Yes.

12 Q. Okay.

13 A. I was confused about which night it was that my
14 son was with Stephen.

15 Q. Okay. So this third time -- and correct me if
16 I'm wrong -- I believe you said that it was earlier in the
17 night, and Stephen and your son went out, but then your
18 son got sick, so they came back. So was the defendant
19 able to finish his massage at that time?

20 A. No, not on the -- at the third time, no. When
21 Stephen brought my son home, it stopped after that.

22 Q. And so did he ever finish up that massage
23 session?

24 A. It -- yes. The time -- number four for this, it
25 was.

1	<i>Q.</i> The last time?
---	--------------------------

2 | A. Yeah, the last time.

3 Q. Okay. And was that the day after your son got
4 sick?

5	A. Yes.
---	---------

6 Q. Okay. So tell us about that last incident,
7 whatever you can recall.

8	A. Number four?
---	-----------------

9	<i>Q.</i>	Yes.
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10 A. He -- I had texted him and told -- Thomas, and
11 told him that I wanted him to come over and give me the
12 massage because he never did it the night before, and my
13 back was hurting really bad.

14 So he came over and he tried to offer me
15 these pills, and I didn't know what they were. And I
16 don't take pills that I don't know what they are. So I
17 acted like I was taking them because he made it seem like
18 he really wanted me to take them by saying, Oh, you know,
19 here's a drink. Come take them right here so I can see
20 you take them.

21 And I asked him what they were. And he said
22 they were muscle relaxers and that's why he was trying to
23 make me take them is because they would help my back even
24 more.

25 | So I pretended like I was taking them. I

1 didn't want to take them anyway because I was already
2 tired. And it was late when he came over, and I'm not
3 really like that much of a late night person as much as he
4 was. And --

5 Q. I'm going to stop you right there. So it sounds
6 like you're saying that you were suspicious of the pills.
7 Is that why you didn't take them?

8 A. Yes.

9 Q. Did you go forward with the massage however?

10 A. Yes.

11 Q. Why did you do that if you were suspicious of the
12 pills?

13 A. The reason I was suspicious of the pills was just
14 because -- it's not that I thought really that he was
15 trying to hurt me or anything. I just thought that he was
16 trying to, you know, give me some drugs to get my high or
17 something, you know, and I didn't want to.

18 So it wasn't the pills. I didn't really
19 think that he was trying to hurt me so I shouldn't have
20 anything to do with him. You know, it was just like oh, I
21 won't need the pills, but I'll still, you know, have the
22 massage.

23 Q. Okay. So then you don't take the pills. What
24 did you do with the pills?

25 A. I hid them behind my coffeepot.

1 Q. Okay. And then tell us what happened after that.

2 A. After that I went in my room and got undressed
3 for my massage. I was again wearing my bra and underwear
4 and a towel. And I laid on my bed and got the massage.
5 And I fell asleep after a little while. And I woke up. I
6 don't know if it was because of being touched or if it was
7 hearing the key -- of Stephen putting the key in the door.

8 But -- but I woke up, and I felt Thomas was
9 touching me under my underwear. And as I fully woke up,
10 he is -- I'm sorry. He was touching me over my underwear.
11 And as I fully woke up, he put his hand under my
12 underwear, he put his thumb in my mouth and told me to
13 suck it.

14 Q. Okay. So what did you do at that point?

15 A. I was freaking out and, you know, I was kind of
16 just like pushing him off me, you know, and getting up at
17 the same time. Trying to get him off me and trying to get
18 up away from him.

19 And then Stephen was coming in the
20 apartment. The door was open. He was walking in the
21 apartment. And I was telling Thomas to get out. And
22 after that I was calling the police right after that.

23 Q. Okay. I want to go back and get a little more
24 detail from you. You said that you fell asleep. Were you
25 on your back or on your stomach, your side?

1 A. I was on my back.

2 Q. Okay. And then you woke up, and you said that
3 his thumb was in your mouth?

4 A. Yes.

5 Q. Okay. And you said that he said, Suck it. Is
6 that a quote or is that something along those lines?

7 A. Something along those lines.

8 Q. Would it be accurate to say that you told police
9 that he said to, Use your tongue, baby?

10 A. Yes. Yes. I forgot word for word what he said,
11 and I didn't want to say the wrong thing.

12 Q. Okay. So you recall him now saying, Use your
13 tongue, baby?

14 A. Yes.

15 Q. Okay.

16 A. That's exactly what he said.

17 Q. And now as he's saying this, what kind of voice
18 is he saying it in?

19 A. Like a sexual voice, kind of like lower and
20 quiet.

21 MR. SANDO: I'm going to object to that,
22 Your Honor, as speculation and ask that the answer be
23 stricken.

24 THE COURT: Overruled.

25 BY MS. LEE:

1 Q. Go ahead?

2 A. He was quietly and in a sexual way.

3 Q. So it wasn't like he was like commanding or
4 saying it loudly to you?

5 A. No.

6 MR. SANDO: Leading.

7 THE COURT: Overruled.

8 BY MS. LEE:

9 Q. And then you said that his other hand was first
10 over your underwear and then underneath your underwear?

11 A. Yes.

12 Q. In what manner was he touching you with that
13 hand? What was he doing with that hand?

14 A. He was rubbing my vagina.

15 Q. Okay. Did he penetrate?

16 A. No.

17 Q. Now, when you came to and realized what was going
18 on, what's the first thing that you recall doing?

19 A. Pushing him off me and saying, Get off.

20 Q. And do you remember at what point Stephen came
21 through the door?

22 A. It was as all that was happening that Stephen --
23 Stephen saw him as not -- not as it was happening. But as
24 I was pushing him off and he was getting up and, you know,
25 I'm getting away from him, that's when Stephen saw like

1 then walking in.

2 Q. How did the defendant react when you pushed him
3 off and did what you did?

4 A. He acted like he was scared and then acted like
5 almost -- like he started acting like, Oh, what are you
6 talking about? I wasn't doing anything, you know. What's
7 going on? And just acting like he was scared, like he was
8 caught doing something.

9 Q. Okay. So did you ask him to leave?

10 A. Yes.

11 Q. Okay. And did he leave?

12 A. Yes.

13 Q. Did he try to explain himself or anything before
14 he left?

15 A. He was just saying, What are you talking about?
16 I didn't do anything. But other than that, he didn't like
17 go into any detail or anything like that.

18 Q. So he complied and just left?

19 A. Yes.

20 Q. Okay. After he left, what happened?

21 A. After he left, me and Stephen called the police
22 and the police came.

23 Q. So right after it all happened, do you call the
24 police?

25 A. Yeah.

1 Q. Was it you that called the police or Stephen?

2 A. I called the police.

3 Q. You called the police?

4 A. Yes.

5 Q. And the police responded that night and you spoke
6 with some people?

7 A. Yes.

8 Q. Now, earlier, Meagan, you said that, you know,
9 there was some confusion regarding the night that your son
10 got sick.

11 A. Yes.

12 Q. Is there any confusion in your mind about the
13 manner in which the defendant touched you that night?

14 A. No, not at all. I may have problems with dates
15 or specific time, but not what actually happened.

16 Q. Did you consent that night to have your vagina
17 touched?

18 A. Not at all.

19 Q. Was there any possibility in your mind that this
20 was an accident or misunderstanding?

21 A. No. No, not at all.

22 Q. Okay. Explain.

23 A. I never had any kind of sexual relationship with
24 him whatsoever for him to think that that would be okay.
25 You know, in any other situation you would at least ask

1 somebody, you know, if you're not -- if you're not totally
2 sure.

3 And that definitely never happened. He
4 never asked me. Not only did I not have that relationship
5 with him, but he didn't say anything like that to me. And
6 then afterwards with him asking like he was caught, like
7 he realized he was in trouble.

8 MR. SANDO: Objection. This is opinion and
9 it's not what she observed.

10 THE COURT: It's already been answered. Ask
11 another question.

12 BY MS. LEE:

13 Q. Meagan, when this happened, were you
14 approximately the same height and weight as you are now?

15 A. Yes.

16 Q. Okay. And does the defendant appear to be around
17 the same height and weight?

18 A. Yes.

19 Q. Going back to your comment that you just made
20 about how your relationship was never that type of
21 relationship, did you ever tell him that you were
22 attracted to him in any way?

23 A. No.

24 Q. Did he ever give you compliments?

25 A. Yes. He would tell me that I'm beautiful.

1 Q. And what would you think of them or say in
2 response?

3 MR. SANDO: Objection to what she thinks.
4 She can testify what he said or did.

5 THE COURT: What did you say in response?

6 THE WITNESS: I would say thank you.

7 BY MS. LEE:

8 Q. And these comments were made when Mr. Yates knew
9 that you were with and engaged with Mr. Sumner?

10 A. Yes.

11 Q. Now, were you anxious about reporting this to the
12 police at all?

13 A. Yes. Stephen -- at first I didn't want to.
14 Stephen was the one who told me to call.

15 Q. Why were you anxious about this?

16 MR. SANDO: I'm going to object, Your Honor.
17 It's irrelevant.

18 THE COURT: Overruled.

19 MR. SANDO: May we approach?

20 THE COURT: Sure.

21 So when the lawyers ask to approach, they
22 want to talk about something they don't want you to hear,
23 so don't try to listen.

24 (The following proceedings held at sidebar.)

25 MR. SANDO: I think I know where this is

1 going. She's going to say that he had told her in the
2 past that he had gotten revenge or something on people.
3 He had ways of dealing with people. That she said in her
4 statement he was afraid what he might do. Totally
5 irrelevant. Self-serving.

6 THE COURT: No, that's not. If that's where
7 it's going, it's relevant.

8 MR. SANDO: Well, the fact that what he told
9 her about what he did in the past is not relevant.

10 MS. LEE: Goes to her state of mind. Goes
11 to credibility.

12 THE COURT: Well, go ahead.

13 MR. SANDO: It's like going to her state of
14 mind being 404 evidence. That hasn't ruled on or
15 anything. She can't say she was afraid what he might do
16 to her. She made the call immediately.

17 THE COURT: No. Overruled.

18 (The following proceedings held in open
19 court.)

20 BY MS. LEE:

21 Q. Meagan, earlier I asked you if you were anxious
22 about --

23 THE COURT: Wait. I'm sorry. I'm sorry.
24 Come forward for a second. I just want to clear something
25 up.

1 (The following proceedings held at sidebar.)

2 THE COURT: He lead her and then make sure
3 that it's clean so that we don't get into past acts.
4 Because if he told me or anything like that what he
5 said -- what is --

6 MS. LEE: He said that he has a way of
7 getting revenge on people who screw him. He gave examples
8 by driving --

9 THE COURT: All right. Leave that part out.
10 You can talk about getting revenge that caused her to fear
11 that why she didn't want --

12 MS. LEE: I want to get into the fact that
13 he didn't -- specific examples without going into what
14 those examples were. I think that is different between
15 saying I get revenge then giving specific examples. She
16 also said that he mentioned that his brother is just as
17 big as him and strong and that is not a bad act. Used to
18 intimidate her.

19 MR. SANDO: He's trying get mafia a hit man
20 that has revenge for anybody turns it -- this is far
21 afield. It's totally irrelevant. I mean if she wants to
22 get into these difference acts told me this and that.
23 That is he should have had this done on 404.

24 THE COURT: So he has a way of getting
25 revenge on these people that screw him and she was

1 frightened because of that. Leave it at that.

2 MS. LEE: What about reference regarding his
3 brother?

4 THE COURT: No.

5 MR. SANDO: The fact he gave examples
6 without --

7 THE COURT: No. Let's leave it at that.

8 (The following proceedings held in open
9 court.)

10 BY MS. LEE:

11 Q. Meagan, did the defendant tell you that he has a
12 way of getting revenge on people who, quote, screw him
13 over?

14 A. Yes.

15 Q. Okay.

16 A. That is exactly what he said.

17 THE COURT: And was that the reason you were
18 fearful of calling the police?

19 THE WITNESS: That's not the only reason.

20 THE COURT: Is that --

21 THE WITNESS: That is a reason, yes.

22 THE COURT: Okay.

23 BY MS. LEE:

24 Q. But you decided to call the police anyway?

25 A. Yes.

1 Q. What was your motivation for calling the police?

2 A. Because I realized that even if something were
3 not to happen with me, then if something were to happen
4 with somebody else in the future, this would be on the
5 record.

6 Q. And you told that to police that night?

7 A. Yes.

8 MS. LEE: Can I approach the witness?

9 THE COURT: Sure.

10 BY MS. LEE:

11 Q. Meagan, I'm going to show you what's marked as
12 State's Exhibits 4A, 4B and 4D. If you want to take a
13 look at it and see if that looks like anything that you're
14 familiar with.

15 A. This is --

16 Q. Just a yes or no.

17 A. Yes.

18 Q. So tell us what 4A and 4B represent. Well,
19 actually let me take that back. Let me ask you do 4A and
20 4B look like the layout of your apartment that you were
21 living in at that time?

22 A. Yes.

23 Q. And is it an accurate depiction of basically how
24 your apartment without the furniture would look like?

25 A. Yes, this is exactly the apartment.

1 Q. Okay. And then that third picture -- I forget
2 the number.

3 THE COURT: 4D.

4 BY MS. LEE:

5 Q. 4D. 4D, what -- I know it's a little grainy,
6 but do you recognize that one as well?

7 A. Yes.

8 Q. And what is that one?

9 A. These are the pills that he tried to give me on
10 the last night.

11 Q. Okay.

12 MS. LEE: Your Honor, State moves to admit
13 Exhibits 4A, 4B and 4D.

14 THE COURT: Any objection?

15 MR. SANDO: Yes. There's no foundation.

16 THE COURT: Overruled. 4A, 4B and 4D are
17 admitted.

18 (Exhibits 4A, 4B and 4D admitted.)

19 BY MS. LEE:

20 Q. Now, I'm going to because I have no better way to
21 do it kind of prop this picture. It's a small picture,
22 but can you hold it. So that that you're holding up is
23 4B. Can you --

24 MS. LEE: Permission to publish, Your Honor?

25 THE COURT: Yeah.

1 BY MS. LEE:

2 Q. Can you describe to the jury what that depicts.

3 A. This is a picture of my apartment. This is the
4 living room. This is the door to the bedroom. And -- can
5 I use the other pictures?

6 Q. Yeah. Maybe 4A.

7 A. This one?

8 Q. Yes.

9 A. Okay. This room is right here. It's inside the
10 door. This is the door -- front door to the apartment.
11 This is the living room. This is just like a more up
12 close picture into the bedroom.

13 Q. And was it a one-bedroom or two-bedroom
14 apartment?

15 A. It was one-bedroom.

16 Q. Okay. And so who used the bedroom?

17 A. My son -- our son, Stephen Brian Sumner, II.

18 Q. Okay. And then where did you and Stephen sleep?

19 A. We slept in the living room.

20 Q. Was there a bed in the living room?

21 A. Yes. We had two couches and a bed.

22 Q. So I know it's hard with that picture. I did the
23 best I could. Can you kind of describe for the jury how
24 the couches and the beds were laid out.

25 THE COURT: Would it be okay, Meagan, if you

1 drew a picture?

2 THE WITNESS: Yes. Do you have a marker?

3 THE COURT: Yes. Do it big so everybody can
4 see it.

5 THE WITNESS: Okay. This is the living
6 room. This is the front door right here. This is the
7 kitchen right here. This is the bedroom. This is where
8 the couch was. My bed was right in front of it. The TV
9 was right here. Sorry, my writing is messy.

10 THE COURT: Okay. Now step to the side and
11 point to everybody and describe what you drew.

12 THE WITNESS: Okay. This is my living room.
13 This is the bedroom in the back. This is the front door.
14 This is the kitchen. The couch is right here and the bed
15 was right in front of it right -- see, this is the couch.
16 The bed was right in front right up against it, though,
17 and next to another couch beneath the window. And then
18 the TV was right in front of the couch.

19 BY MS. LEE:

20 Q. Thank you. And so it looks like the couch that's
21 next to the front door, the one that's right up against
22 the bed, it looks like there's no space between the couch
23 and the bed so people couldn't walk back and forth that
24 way.

25 A. Yeah, there's no space.

1 Q. Okay. And now, when you were getting your
2 massage, where were you getting your massage?

3 A. I was laying on the bed right here.

4 Q. Okay. And you were laying north/south on that
5 bed?

6 A. Yes.

7 Q. Okay. Where was your head?

8 A. My head was here.

9 Q. And your feet were then by the TV?

10 A. Yes.

11 Q. And where was the defendant.

12 A. He was right here next to me on my -- me laying
13 down on my back, he was on the right.

14 Q. Okay. And is that generally how your massages
15 always happened?

16 A. Yes.

17 Q. Okay. All right. You can have a seat.

18 Now, a few weeks later do you recall meeting
19 with Detective Dobell?

20 A. Yes.

21 Q. And do you recall making a phone call to the
22 defendant?

23 A. Yes, I do.

24 Q. That phone call, was that your idea or Detective
25 Dobell's?

1 A. He offered it to me as an idea, but it was up to
2 me if I wanted to do it or not.

3 Q. And did you agree to do it?

4 A. Yes.

5 Q. So did Detective Dobell basically give you
6 instructions on kind of how it's going to happen?

7 A. Yes.

8 Q. And did he -- are you aware of whether or not he
9 recorded the call?

10 A. Yes, he did. Yeah, he recorded it and he showed
11 me the recorder. It was right -- we were in the car
12 having the recorded conversation. And he had the recorder
13 right on the center console between us.

14 Q. Okay. And I'm not going to play the call right
15 now, but I want to ask you a couple questions. Did you
16 ask him during that call why he tried to touch you while
17 you were asleep?

18 A. Yes.

19 Q. And did he deny touching you in response to that
20 question?

21 A. No, he didn't.

22 Q. Did you ask him what kind of pills he gave you?

23 A. Yes.

24 Q. And did he deny giving you pills?

25 A. No.

1 Q. Did he during the course of that call admit to
2 touching you?

3 MR. SANDO: Objection, Your Honor. I'd like
4 to see her refer to the page and line in the script.

5 THE COURT: Overruled. She's testifying
6 from memory.

7 BY MS. LEE:

8 Q. Go ahead.

9 A. Can you rephrase -- can you ask the question.

10 Q. During the call, did he admit to touching you?

11 A. I don't remember.

12 MR. SANDO: Asked and answered.

13 BY MS. LEE:

14 Q. Okay.

15 THE COURT: Well, hang on a second. She
16 didn't answer because you objected. So she never did
17 answer.

18 MR. SANDO: No, she --

19 THE COURT: Now she --

20 MR. SANDO: She asked if he touched her.
21 She had already asked that question.

22 THE COURT: All right. Sorry.

23 MS. LEE: Actually I didn't, but...

24 THE COURT: Start over.

25 MS. LEE: I will. I will, Your Honor.

1 BY MS. LEE:

2 Q. I just asked you if he did admit to touching you,
3 and I believe your answer is that you don't recall?

4 A. Yes. I don't recall.

5 Q. Okay. But whatever was said will be on that
6 recording. Do you agree?

7 A. Yes.

8 Q. Okay.

9 A. I remember the question was asked. I don't
10 remember word for word the answer, and I don't want to
11 lie.

12 Q. Okay. And did he admit to giving you pills?

13 A. Yes.

14 MS. LEE: I have no further questions, Your
15 Honor.

16 THE COURT: Cross-examination?

17 Well, does anybody need to take a break yet?

18 JUROR: I do, sir.

19 THE COURT: All right. We'll take about 15
20 minutes. And, Meagan, you can get down.

21 Remember the admonition. Don't talk about
22 the case. Don't form any conclusions.

23 And I'll see you back about 20 minutes after
24 3:00 and then we'll hear the cross-examination.

25 (The jury exited the courtroom.)

1 THE COURT: All right. Anything for the
2 record before we break?

3 MR. SANDO: No.

4 THE COURT: Okay.

5 (Court in recess.)

6 THE BAILIFF: Jury entering.

7 (The jury entered the courtroom.)

8 THE COURT: We're back on the record.

9 20132921. Mr. Yates, counsel, all the jurors.

10 John, do you want to go ahead and do
11 cross-examination.

12 CROSS-EXAMINATION

13 BY MR. SANDO:

14 Q. Is it okay to call you Meagan or would you prefer
15 Ms. Marlborough?

16 A. Meagan is fine. Thank you.

17 Q. Meagan, are you comfortable now?

18 A. Yes, I'm okay.

19 Q. As much as you can be?

20 A. As much as I can be, yes.

21 Q. If you don't understand anything I say, you think
22 I'm trying to trick you, let me know because I'm just
23 trying to ask questions. Okay?

24 A. Okay.

25 Q. You said your son is three?

1 A. Yes.

2 Q. So he was one year old at the time this happened?

3 A. Yes.

4 Q. Was he a baby in diapers?

5 A. Yes. He's still in diapers right now. Actually
6 he's being potty trained, but he's a little slow.

7 Q. And then there was -- you gave several interviews
8 to the police in this case; right?

9 A. Yes.

10 Q. The first one was with Detective Aitchison the
11 night it happened?

12 A. Yes.

13 Q. And you've read that transcript?

14 A. Yes.

15 Q. And, in fact, you've made some comments as late
16 as a month ago about trying to change some of the
17 transcript?

18 A. Yes. I actually did not see the transcript until
19 then. That's why I gave the corrections then.

20 Q. Do you remember telling Detective Aitchison that
21 on the day of the incident you got a two-hour massage and
22 the day before it was only 45 minutes because your son got
23 sick and threw up?

24 A. Yes.

25 Q. And do you remember telling Detective Dobell that

1 the massage was two hours, and then after he asked you, So
2 after two hours your son got sick, and you said uh-huh?

3 A. I'm sorry. Can you rephrase the question.

4 Q. You were asked, So after two hours your son got
5 sick? And you said uh-huh. Do you remember telling
6 Detective Dobell that?

7 A. No. Are you asking about the last night or
8 the --

9 Q. No.

10 A. When my son was actually sick? Are you saying --
11 are you asking me if I said that I agreed to the fact that
12 Stephen came back because my son was sick?

13 Q. Yeah. That was the night before this incident?

14 A. Yes. Yes. Yes. I thought you were asking me
15 about the next night.

16 Q. When Detective Dobell asked you after the two
17 hours, he's talking about the two-hour massage, your son
18 got sick, and you said uh-huh.

19 MS. LEE: Your Honor, can we approach?

20 THE COURT: Yes.

21 (The following proceedings held at sidebar.)

22 THE COURT: John, come here.

23 MS. LEE: Your Honor, as we are reviewing
24 the transcript and the audio, it appears that the way that
25 it's transcribed it says huh-uh for every -- for her

1 responses hum-hum and hum-hum.

2 THE COURT: It's the same?

3 MS. LEE: Yeah. So I think the proper way
4 to impeach her is to ask what she meant when she said that
5 because the transcript unfortunate she does that a lot.

6 MR. SANDO: The detectives were obviously a
7 little upset with these uh-huh and huh-uh. But to me
8 that's a yes.

9 THE COURT: Show her the transcript so that
10 she'll understand, and then she can explain what her
11 answer is. Okay?

12 (The following proceedings held in open
13 court.)

14 BY MR. SANDO:

15 Q. Meagan, I'm going to show you what's been marked
16 as Exhibit 5B.

17 A. Okay.

18 Q. Would you turn to page 3, please.

19 A. I'm sorry. What page?

20 Q. Page 3.

21 A. Page 3?

22 Q. Yes.

23 A. Okay.

24 Q. It starts with line 26, The last time Stephen was
25 here, he went for a walk. That would be your boyfriend;

1 right?

2 A. Yes.

3 Q. And you were asked, Why didn't he stay in the
4 apartment?

5 And you said, I just wanted to walk. My son
6 was up and stuff and he was grouchy. He was just kind of
7 trying to give me space because he knows that, you know --
8 I don't know. I'm disabled. I have severe chronic pain.
9 And, you know, getting my massage is kind of an important
10 thing.

11 So this last time according to the police
12 report Mr. Yates came over, started the massage, but your
13 son got sick. Do you see at line 42? Does that say
14 hum-hum?

15 A. Hmm-hmm.

16 Q. H-M-M, H-M-M.

17 A. Can I read it?

18 Q. Line 42.

19 A. I'm confused reading this.

20 Q. I'm just trying to figure out when you said
21 hum-hum, does that mean yes, that Stephen left with a sick
22 kid to give you space?

23 A. I think I did say yes, but that wasn't the last
24 time.

25 Q. This is Detective Dobell's interview of October

1 18 of 2012. After you say he got sick, so according to
2 the police report Mr. Yates had come over, started the
3 massage, but your son got sick. Does that hum-hum mean
4 yes? And then you say -- the question: And he threw up?

5 But he left and then came back?

6 Yeah.

7 Is that right?

8 A. Hold on.

9 Q. This is referring to October 10th -- October 5th
10 about 10:00 p.m. Do you see that?

11 A. Yes.

12 Q. And then on the next page, So he, Yates, came
13 over at 10:00. That was the start of the massage. How
14 long before -- did that last before your son got sick?

15 It's hard to say because I wasn't really
16 paying attention to the time, but let's say two hours
17 maybe.

18 So two hours after your son got sick. Is
19 that right?

20 A. Two hours after the massage started he got sick?

21 Q. It just says right here on line 16, After two
22 hours your son got sick?

23 Hum-hum.

24 Is that yes again at line 17, page 4?

25 A. I think that was yes, yeah.

1 Q. So now you're saying, though, that that happened
2 the night before. Is that right?

3 A. Yes, it was. But the -- I said that this --
4 because he referred to me as the date of October 5th, and
5 I think that confused me because I know that it wasn't the
6 last time that this happened. It was the night before.
7 And that was why the massage was even happening the last
8 night because the night before it was interrupted.

9 Q. Okay. So this is incorrect about that happening
10 October 5th?

11 A. The date --

12 Q. It would have been the night before; right?

13 A. It would have been the night before, yes.

14 Q. And this -- you were asked this question only
15 hours after the incident. Is that right?

16 A. I thought the other detective was the one who
17 came --

18 Q. Oh, I'm sorry.

19 A. -- to my house after.

20 Q. Yeah, this was given after you had time to think
21 about it, but you were just confused with the dates?

22 A. Yes. This was the -- this was not the detective
23 that came that night.

24 Q. We'll get into that in a minute. So did you
25 often take your one-year-old out for two hours at night

1 around 10:00 to 12:00, midnight?

2 A. I didn't.

3 Q. Stephen did?

4 A. Stephen did once in a while, yes.

5 Q. On the first statement it was massage for two
6 hours and then -- on your Dobell statement. It was for
7 two hours and then he got sick. But now you're saying
8 that's wrong. It was the night before?

9 MS. LEE: Objection. Asked and answered.

10 THE COURT: I want the jury to understand
11 what is clear. Maybe it's still not clear. Is that
12 right?

13 Do it one more time, John.

14 BY MR. SANDO:

15 Q. So when you gave the statement to
16 Dr. Dobell --

17 THE COURT: Excuse me. Detective Dobell.

18 Q. -- that you got a massage for two hours and then
19 your son got sick and was taken out, you meant the night
20 before?

21 A. I meant the night before, yes.

22 Q. When the prosecutor was asking you questions
23 about who was present, wasn't Stephen present for two of
24 these four massages?

25 A. I'm sorry. What was the question again?

1 Q. Wasn't Stephen there for two of the massages?

2 A. He was there for one of them. He was there when
3 we hung out at my apartment which was not a massage the
4 second time.

5 Q. Oh. What was that?

6 A. He was there for one massage. Stephen was there
7 when we were hanging out watching a movie, which would be
8 two times hanging out or being together.

9 Q. Do you remember telling Detective Aitchison that
10 Stephen normally stays, but that night he went for a walk?

11 A. Yes. He was asking me does Stephen normally stay
12 there. I said yes, normally. I mean that's how he worded
13 the question, but that -- it didn't really make much sense
14 because I told him that it was only a couple times.

15 Q. But when Detective Aitchison was asking you about
16 massages, you did say Stephen normally stayed during the
17 massage and went for a walk. Do you remember telling him
18 that?

19 A. I told him that Stephen gone on a walk that
20 night, yes.

21 Q. You didn't say he normally stays?

22 A. No. Can you tell me which line or page.

23 Q. Well, I have to give you another transcript.

24 A. Oh, not this one?

25 MR. SANDO: May I approach the witness:

1 THE COURT: Yes.

2 THE WITNESS: I want to make sure I have
3 both of them right here before you're asking me the
4 questions.

5 BY MR. SANDO:

6 Q. I understand.

7 A. So I know which one you're talking about.

8 Q. This is on two pages. There's two transcripts.

9 A. There has been a couple actual mistakes in my
10 transcripts that I have noticed.

11 Q. Okay. In this one on page -- this is to
12 Detective Aitchison, page -- this is page 4. Stephen was
13 being friendly, but normally he went on a walk. And I
14 think one other night he went on a walk and the rest of
15 the time he was in the house actually there watching.

16 Do you remember saying that?

17 A. I don't remember saying normally. I remember
18 saying the rest of that, yes, that he went on a walk --

19 Q. Okay.

20 A. -- because he did go on a walk.

21 Q. But the actual audio would tell for sure whether
22 or not you said he was actually there watching?

23 A. Yeah, it would tell for sure what I said, yes.

24 Q. Okay. Is there some reason to believe that this
25 is a faulty transcription of what you said?

1 A. I can't say for sure because there -- I can point
2 out right now a mistake in my transcripts that is, you
3 know, for sure wrong.

4 Q. Now, you said that you got four massages you're
5 sure?

6 A. Yes.

7 Q. Four massages. And you counted the number of
8 one, two, three, four?

9 A. Yes.

10 Q. Do you remember telling Detective Aitchison that
11 it was five?

12 A. No.

13 Q. I'm going to ask you if you remember this in
14 Detective Aitchison's interview. How many times has he
15 given you a massage?

16 I can't say for sure. A handful. I would
17 say five. Give or take I would say five.

18 A. I would say I said that, yeah. I would say five
19 give or take, that is what I said. Give or take.

20 Q. And I wanted to ask you about that first massage.
21 You said he gave you an open diet Coke; right?

22 A. Diet Pepsi, yes.

23 Q. Diet Pepsi, excuse me. And after you drank it,
24 you got woozy and passed out?

25 A. I never felt woozy. I just was getting the

1 message, felt tired. Next thing I know, I'm getting woken
2 up.

3 Q. And you said Stephen was really upset when he got
4 in?

5 A. Yes.

6 Q. And he had a suspicion that you had been like
7 roofied; right.

8 A. He was -- he didn't say something like that. He
9 was just worried. What's wrong with you?

10 Q. Okay.

11 A. Why is it so hard to wake you up?

12 Q. But then on the fourth massage you say he gave
13 you three pills, and you asked if you could drink a diet
14 Coke to wash them down. My question is if you already had
15 suspicions of him drugging your drink, why did you even
16 have any more contact with him?

17 A. Can you rephrase the question, please.

18 Q. If you had suspicions as well as Stephen that
19 you -- your drink had been drugged, why did you have
20 anything to do with him after that?

21 A. Because I didn't realize that and I didn't think
22 that until after this had already happened.

23 Q. Okay. But then at the fourth massage you get
24 these pills. And he says, Drink them with a diet Coke.
25 You didn't just say get out or this is ridiculous. You

1 pretended you swallowed them?

2 A. Yes. Yes, I pretended I swallowed them.

3 Q. Okay. And then you hid those pills?

4 A. Yes.

5 Q. And you saw a picture of them?

6 A. Yes.

7 Q. And the police grabbed those pills?

8 A. Yes.

9 Q. And do you know what happened when they analyzed
10 them?

11 A. What?

12 Q. You don't know?

13 A. Well, they told me -- I think Detective Dobell
14 told me that they were going to be sent to see what they
15 were, but no one could know what they were as of yet.

16 Q. So you don't know --

17 A. They were all confused about what they were
18 because they couldn't automatically figure out what they
19 were.

20 Q. So you don't know after an analysis, it turned
21 out there was no toxins or narcotic drugs in them?

22 A. I have no idea.

23 Q. But when you testified, you seemed quite upset
24 about that first incident when you didn't get woozy, but
25 you said you thought maybe that diet Pepsi was spiked.

1 A. Yes. I didn't say at the time I thought that. I
2 said now I thought that after all that's happened.

3 Q. When Stephen walked in, you said maybe the key
4 woke you up?

5 A. Yeah. I'm not 100 percent sure.

6 Q. Is there a walkway at your apartment?

7 A. Yes.

8 Q. So you can hear people walking up and down?

9 A. Up the stairs, but not on the ground, no.

10 Q. Okay. Do you --

11 A. We live downstairs.

12 Q. You're not sure what woke you up. The only thing
13 you can think of is the key in the --

14 A. It was either the key in the door or Thomas
15 touching me, which I know the door was locked and Stephen
16 was using the key to unlock the door. So I know that he
17 would had to have done that to get into the apartment.

18 Q. So it was correct that your transcript said, It
19 was like the door open or unlocking or something that woke
20 me up?

21 A. I'm sorry. What is the question?

22 Q. So it's correct when you said to Detective
23 Dobell, I don't know if it was like the door open or
24 unlocking or something that woke me up? That's what you
25 told him. Is that right?

1 A. Yes.

2 Q. And then you said -- what did he -- what did he
3 say when he had the thumb in your mouth when you woke up?

4 A. He said, Suck on it, baby.

5 Q. Do you remember telling Detective Dobell he said,
6 Bite it?

7 A. Bite it, that's what he said.

8 Q. Well, which did he say?

9 A. What I told her he said.

10 Q. So you were incorrect when you told Detective
11 Dobell that he said, Bite it referring to the thumb. Is
12 that right? Well, in any event, you're saying --

13 A. It was something along the lines of doing
14 something with his thumb.

15 Q. Okay.

16 A. I know that what she said was true. It's just I
17 have anxiety when it's not in front of me to remind me.
18 Then I can't say for sure because I'm not going to sit
19 here and lie.

20 Q. That's fine. You fell asleep then the first and
21 the last time?

22 A. Yes.

23 Q. And the first time you say you think it was
24 because your drink was spiked?

25 A. I said I thought it was possible that that's what

1 happened. I wasn't sure.

2 Q. And you fell asleep the last time because?

3 A. I was tired and it was late.

4 Q. You said you had chronic pain and you take
5 oxycodone for a prescription; right?

6 A. I was, yes. Not anymore.

7 Q. But you were taking it about this time; right?

8 A. Not at that time. I was taking them on a regular
9 basis, but I didn't really take them at night.

10 Q. How many would you take?

11 MS. LEE: Objection. This is irrelevant.

12 THE COURT: Overruled.

13 THE WITNESS: I didn't take a specific
14 amount. It was day to day how much pain I'm in.

15 BY MR. SANDO:

16 Q. So that might be a couple?

17 A. Yes.

18 Q. And oxycodone has an opiate in it?

19 A. Yes, it does.

20 Q. And it makes you relax sometimes to go to sleep?

21 A. No, not me.

22 Q. Not you?

23 A. No. I've been taking it for a long time. It
24 doesn't really cause any side effects for me because I was
25 taking them since I was like 16 years old.

1 Q. Did you have any problems talking with
2 Detective Aitchison?

3 A. Yes, I did.

4 Q. You didn't like him?

5 A. He was not very nice to me.

6 Q. How so?

7 MS. LEE: Objection. Irrelevant.

8 THE WITNESS: I don't want to answer that
9 question.

10 THE COURT: I'm sorry. Two people were
11 talking at once.

12 MR. SANDO: You objected.

13 BY MR. SANDO:

14 Q. And you said what?

15 A. It's irrelevant.

16 Q. You said --

17 THE COURT: She said --

18 THE WITNESS: I said I --

19 THE COURT: -- she didn't --

20 THE WITNESS: -- will not answer.

21 THE COURT: All right.

22 You asked whether or not she liked the
23 detective. There was an objection saying --

24 MS. LEE: The question was why didn't she.

25 THE COURT: Why didn't she.

1 And you said it's irrelevant?

2 MS. LEE: Yes.

3 THE COURT: Sustained.

4 BY MR. SANDO:

5 Q. Do you remember Detective Aitchison asking you
6 questions specifically about where his hand was?

7 A. Yes.

8 Q. Do you remember Detective Aitchison saying,
9 Because the officer said you only said --

10 MR. SANDO: Objection. This is an improper
11 question. Is he trying to impeach her?

12 THE COURT: You didn't ask a question that
13 she had the opportunity to answer yet about where his hand
14 was.

15 BY MR. SANDO:

16 Q. I'm going back to Detective Aitchison's interview
17 with you.

18 A. Okay.

19 Q. There was a discussion whether it was over or
20 under your underwear.

21 A. Yes.

22 Q. Do you remember him asking you --

23 MS. LEE: Objection. Improper question,
24 improper impeachment.

25 THE COURT: First ask her what she was asked

1 and what her answer was. And then if it's different from
2 what's in the transcript, then you can ask her.

3 BY MR. SANDO:

4 Q. Do you remember the officer asking -- because the
5 officer said that you only said over the underwear. And
6 then I talked to Stephen, and he said that you only told
7 him over the underwear.

8 THE COURT: It's still improper. Ask her a
9 question. What did you tell the officer?

10 MR. SANDO: Okay.

11 THE COURT: And then she'll answer.

12 BY MR. SANDO:

13 Q. What you did tell Stephen happened, under or over
14 the underwear?

15 A. I didn't tell Stephen specifics on it, if he had
16 his hand under my underwear or over my underwear. I told
17 him that he was touching me and I was asleep.

18 Q. Did he understand that to be over your underwear?

19 A. I don't know what Stephen understood it as.

20 Q. Before you talked to Detective Aitchison, you
21 talked to a couple of police officers.

22 A. Yes, I did.

23 Q. Officer Altman, Officer Frank.

24 A. Yes. They -- I had a little bit of a problem
25 with them too.

1 Q. Did you tell either one of those officers that
2 he -- that he touched you over the underwear?

3 A. I don't know. I don't remember specifically what
4 I told them.

5 Q. So according -- do you remember telling
6 Detective Aitchison -- first of all, he never took his
7 clothes off; right?

8 A. I'm sorry. Can you state it again.

9 Q. He never took his clothes off?

10 A. He never took his clothes off, no.

11 Q. And you said repeatedly he never showed any
12 sexual interest in you at all?

13 A. No, not at all.

14 Q. Okay. And when he asked you which hand was on
15 your vagina, you said he had his left hand on that vagina.
16 Do you remember that?

17 A. Yes.

18 Q. And his right thumb in your mouth?

19 A. Yes.

20 Q. Kind of propped up on his side?

21 A. Yes.

22 Q. But then when you talked to Detective Dobell, it
23 was his left -- his right hand was rubbing your crotch and
24 his left hand was in your mouth. Is that right?

25 A. I think that was a typo.

1 Q. A typo?

2 A. Or a mistake. I don't know if they mixed it up
3 or what because that's not what happened.

4 Q. So the transcript is incorrect?

5 A. It's incorrect in more than one way, yes.

6 Q. And you corrected that with the county attorney's
7 office from an e-mail on March 24th. Is that right?

8 A. Yes.

9 Q. Let me ask you if you recall this e-mail.

10 MS. LEE: Objection. Improper.

11 THE COURT: I don't even know what the
12 question is yet.

13 MR. SANDO: I haven't asked the question.

14 THE COURT: I know.

15 BY MR. SANDO:

16 Q. You wrote an e-mail to Jennifer Murietta on March
17 24th about this case. Is that right?

18 A. Yes.

19 Q. And that's where you correct yourself and you
20 say, During the night of the incident where the police
21 came --

22 MS. LEE: Objection, Your Honor. This is
23 improper impeachment.

24 THE COURT: Correct. Sustained.

25 BY MR. SANDO:

1 Q. Do you remember talking with Ms. Lee and Jennifer
2 Murietta on March 19th about after you reviewed the
3 transcript and you wanted to make a comment about the
4 transcript? Do you remember that?

5 A. No, because I don't know what you're talking
6 about. Are you talking about the e-mail? Are you talking
7 about --

8 Q. A phone conversation --

9 A. A phone conversation?

10 Q. -- with -- you called Ms. Lee.

11 A. Okay.

12 Q. Right? Is that right?

13 A. When? For what?

14 Q. On March 19th.

15 A. I don't know if it was that date.

16 Q. But you remember calling her?

17 A. Yes, I called them, yeah.

18 Q. Okay. And Jennifer Murietta was listening in.

19 Is that right?

20 A. Yes. I think I remember that, yes.

21 Q. And that's when you say that his right thumb was
22 in your mouth and his left hand was under her underwear.
23 Is that right?

24 A. Yes.

25 Q. And this is a year and a half after the incident.

1 Is that right?

2 A. I don't know specifically how long it is. If you
3 say it's that long, then it is.

4 Q. The night of that incident it's your -- you said
5 it was the left thumb and right hand, but after you looked
6 at the transcript, you switched them around. Is that
7 right?

8 A. In the transcript it was switched around from
9 what really happened.

10 Q. Well, it was what you told the detective, wasn't
11 it?

12 A. It was his left hand touching my vagina and his
13 right-hand thumb in my mouth.

14 Q. Okay. So here's is the couch.

15 A. I'll show you right now. Like that.

16 Q. So I'd be like this and -- okay.

17 MS. LEE: Objection, Your Honor.

18 THE COURT: Overruled. She offered to
19 demonstrate.

20 BY MR. SANDO:

21 Q. I'm laying down and you're laying down pretend.
22 This is my thumb and that one is down here on my crotch.
23 Is that right?

24 A. Yes.

25 MS. LEE: Your Honor, I think the defense

1 has made its point if he can move away from the victim and
2 stop demonstrating.

3 THE COURT: Let's have a question.

4 MR. SANDO: Yes.

5 BY MR. SANDO:

6 Q. So --

7 MR. SANDO: Thomas, stand up, would you.

8 If I may, Your Honor, stretch your arm
9 out.

10 BY MR. SANDO:

11 Q. Do you agree he has a short arm? You've seen --
12 you've met with him before.

13 A. I guess.

14 Q. So --

15 A. It's a normal arm.

16 Q. So he was like this?

17 A. I told you how he was. Left hand touching me and
18 right hand in my mouth.

19 Q. Okay. Like this?

20 A. I can't -- like I can't tell you.

21 MS. LEE: Answered the question, Your Honor.

22 THE COURT: Sustained.

23 THE WITNESS: I'm telling you.

24 BY MR. SANDO:

25 Q. So it was like this?

1 MS. LEE: Your Honor --

2 THE COURT: Sustained.

3 THE WITNESS: If you --

4 THE COURT: Stop it. Stop it. She said she
5 was lying on the bed. She described how it was. She said
6 which hand was where. And the jury can figure out what
7 the mental picture is.

8 MR. SANDO: I understand. There's two
9 different statements about right and left, and I just
10 wanted to --

11 THE COURT: You made it clear. One time she
12 said one thing and then another time she said another.

13 THE WITNESS: And I understand. I know I
14 did that, but --

15 THE COURT: Okay.

16 THE WITNESS: -- the reason I did
17 that --

18 THE COURT: Meagan, there's no question
19 right now.

20 BY MR. SANDO:

21 Q. Okay. You take -- you said you were taking
22 oxycodone for your back.

23 A. Yes.

24 Q. Do you remember telling Detective Aitchison that
25 you were bedridden 85 percent of the day every day?

1 A. Yes.

2 Q. You were interviewed by Detective Dobell on
3 October 18th. Is that right?

4 A. It says October 18, yes.

5 Q. And you have that up there; correct?

6 A. The transcript?

7 Q. Detective Dobell's.

8 A. Yes.

9 Q. If you'd turn to page 16.

10 A. Okay.

11 Q. Line 13. This is sometime after the incident.
12 You told him that the left thumb is in your mouth. Is
13 that right?

14 A. No. Because if you look at line 17 and 18, he
15 says, On his left elbow? And I said, Yes.

16 Q. Well, he's saying he was propped up on his left
17 elbow.

18 A. Yes. And if he's propped up on his left elbow,
19 then his other hand is in my mouth.

20 Q. Okay. And if you look at lines 10 and 11, he
21 asked which thumb is in your mouth. You said, This thumb.
22 This one and then his right hand referring to the bottom.
23 In other words, it was the opposite of what you're
24 testifying as far as which hand?

25 A. I was saying this hand, this thumb. His right

1 hand, his right thumb.

2 Q. You say, This one and then his right hand. You
3 --

4 A. This one and then his right hand. This one, his
5 right hand. That's how I talk.

6 Q. So which hand was in your pants?

7 A. Left.

8 Q. If you look at line 24 --

9 A. Okay.

10 Q. -- what did you tell the detective when he asked
11 if the right hand was under your pants?

12 A. It says here that I said, Yes, right hand.

13 Q. You say that's -- is that incorrect?

14 A. That -- that was incorrect, yes. I'm not sure if
15 that was a typo because I'm not -- I can't listen to it
16 right now. But I know that him asking me these questions,
17 I have it confused because I have a hard time -- a hard
18 time with that. Just like you showing me this, I have a
19 hard time with that.

20 Q. Okay. You said he was on top of you.

21 A. I never said he was on top of me.

22 Q. You didn't?

23 A. No.

24 Q. I thought you did. I must be incorrect then.
25 You never stated he was on top of you?

1 A. I never said he was on top of me.

2 Q. You said you pushed him off that I remember.

3 A. Yes.

4 Q. Okay. So both of his hands are occupied, the
5 heavy male. How did you push him off?

6 A. His hand was over me, over my shoulder laying
7 down. So me coming up, I would just be touching his arm
8 and pushing him off, his hand.

9 Q. Well, he had difficulty getting up and sitting
10 down; right?

11 A. Yes.

12 Q. Because he's disabled. He has a hard time
13 walking?

14 A. Yes.

15 Q. So when he gave you massages, he gave you back
16 and front massages, right, with the exception of private
17 parts?

18 A. Yes.

19 Q. When the police arrived, your panties were on the
20 bed; right?

21 A. My what?

22 Q. Panties. You left them on the bed?

23 A. They were on the couch.

24 Q. Oh, on the couch. Okay. And you put them on the
25 couch?

1 A. Yes.

2 Q. What, for collection?

3 A. Yeah. I knew that they would want that.

4 Q. Did anybody ever tell you the results of any DNA
5 test?

6 A. I thought that they found DNA. That it -- it was
7 his.

8 Q. Who phoned you back?

9 A. I don't -- I'm not going to say. I don't
10 remember.

11 Q. You had an idea that somebody told you?

12 A. Yes, I thought somebody did. Maybe somebody just
13 told me that there was DNA, which there was, but not that
14 it was his.

15 Q. Do you know whose DNA it was?

16 A. I thought they told me that Stephen's was on
17 there along with someone else's. That they weren't aware
18 of who it was. I don't remember.

19 Q. Now, you were in town a couple of weeks ago for
20 purposes of a prior hearing?

21 A. I'm sorry. What?

22 Q. You were here in town a couple weeks ago; right?

23 A. I live here. Yes.

24 Q. Oh, you live here?

25 A. Yeah.

1 Q. And a couple weeks ago you had a talk with
2 Stephen, didn't you, on the phone?

3 A. Yes.

4 Q. You called him up in Washington?

5 A. Yes.

6 Q. And you told him, Now that I think about it,
7 you're wrong. His hand was under my panties.

8 A. I'm sorry. What?

9 Q. Did you tell him, I've been looking at the
10 transcripts. My -- his hand was under my panties, not
11 over them?

12 A. I don't remember.

13 Q. Is it possible you said that?

14 A. It's possible that I talked to him about it
15 because he was -- he was there. And he was asking me
16 about the trial, when it was coming up and stuff. And I
17 told him that, you know, I was going to have a hard time,
18 but...

19 Q. Who called whom?

20 A. I don't remember.

21 Q. Was it an attempt to get back together again?

22 A. No. No, not at all.

23 Q. So when you conferred with him a couple of weeks
24 ago just before trial, did you talk about any other facts
25 of the case?

1 A. Nothing facts of the case, no. I talked to him
2 about my son and my own stuff, but nothing --

3 Q. But you don't remember telling him it was under,
4 not over the panties?

5 A. No, I don't remember, no.

6 Q. Does Stephen use drugs?

7 A. No.

8 MS. LEE: Objection, Your Honor.

9 THE COURT: It's already answered.

10 BY MR. SANDO:

11 Q. He takes prescription medication, though, doesn't
12 he?

13 MS. LEE: Objection.

14 THE COURT: Sustained.

15 MR. SANDO: I believe we ruled this with
16 Judge Griffin, Your Honor.

17 THE COURT: I sustained the objection.

18 BY MR. SANDO:

19 Q. You said you were taking oxycodone back during
20 that time. Are you still or not?

21 A. I'm still -- I'm not right now, no.

22 MR. SANDO: That's all I have, Your Honor.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MS. LEE:

1 Q. Meagan, I just have a few questions for you.
2 It's going to be real quick.

3 A. Okay.

4 Q. You said that there were four massages at your
5 home; correct?

6 A. Yes.

7 Q. Was there a time when he actually did a leg
8 massage for you at your place of work?

9 A. Yes.

10 Q. Okay. So that would be the fifth massage?

11 A. Yes.

12 Q. Okay. But only four at your apartment?

13 A. Yeah. It wasn't -- it wasn't like a two-hour.
14 It was sitting there for five minutes. I wouldn't even
15 count that.

16 Q. Okay.

17 A. I wouldn't even count that.

18 Q. All right. And then when Detective Dobell
19 interviewed you back whenever the date was, and I know you
20 said you're not good with dates, did you tell him that he
21 touched you under your underwear?

22 A. Yes, I did tell him, yes, I did.

23 Q. Okay. So it's not some new thing that you're
24 saying in recent months. You told him that back in
25 October of 2012?

1 A. Yes, I did.

2 MR. SANDO: Your Honor, I don't mind leading
3 questions, but she's testifying.

4 THE COURT: Overruled.

5 BY MS. LEE:

6 Q. Meagan, you said -- you made a comment earlier
7 that you have a hard time with all of this. And I wanted
8 to give you a chance to clarify what you meant regarding
9 that.

10 A. As you can tell -- as you can tell, like I have
11 problems. I have anxiety. Like this isn't as much
12 upsetting me. It's just everybody staring at me. And,
13 you know, I don't want -- I don't want anything to happen
14 because of something that I did wrong, you know, that I
15 could have avoided.

16 And I have anxiety. And it's obvious to
17 people sometimes or they might get the wrong impression
18 about me, like I seem rude or something like that, but
19 it's not that at all. You know, my face gets tomato red
20 and it might look like I'm lying or something, but I'm
21 nervous and I'm embarrassed.

22 And yeah, I mean I'm terrible with dates.
23 If somebody asks me about a date, you can't expect a
24 straight answer from me on that. But if it comes down to
25 the facts, you can rely on me to tell the truth of what's

1 going on.

2 Q. Okay. Now, Meagan, you did -- earlier during my
3 direct examination you said that you did get confused
4 about the day that your son got sick. Is that correct?

5 A. Yes.

6 Q. Now, I want to ask you -- and this is my last
7 question -- do you have any shadow of a doubt or any sort
8 of issue of concern regarding your memory specific to the
9 defendant touching you on your vagina?

10 MR. SANDO: Objection, Your Honor. That's a
11 highly improper question.

12 THE COURT: Yeah. And it's overruled.

13 BY MR. SANDO:

14 Q. Do you have any difficulty remembering that
15 incident?

16 A. Not at all. Not at all.

17 MS. LEE: No further questions.

18 THE COURT: Jurors, any questions for
19 Meagan?

20 (The following proceedings held at sidebar.)

21 THE COURT: This is the same number. This
22 is the same as number 2 I think.

23 MR. SANDO: I think the second part -- what
24 her -- wrong -- okay. Then number 2. This one I don't
25 have an objection as long as it's stressed during --

1 THE COURT: Yeah. Okay.

2 Anything else?

3 (The following proceedings held in open
4 court.)

5 THE COURT: I've got a couple questions from
6 the jurors.

7 Did Mr. Yates make any sexually based --
8 what you would interpret as a sexually based comment
9 during the massages?

10 THE WITNESS: No.

11 THE COURT: No, never did?

12 THE WITNESS: No.

13 THE COURT: And --

14 THE WITNESS: I'm sorry.

15 THE COURT: I mean other than saying you're
16 beautiful?

17 THE WITNESS: And having his thumb in my
18 mouth?

19 THE COURT: Right.

20 THE WITNESS: Other than that, no.

21 THE COURT: Okay. So your back was what was
22 injured. And that was what the massage was supposed to be
23 helpful for. A couple jurors were wondering why you were
24 lying on your back when it was your back that was to be
25 massaged.

1 THE WITNESS: Because every time it was --
2 it was everywhere because it was full body because I don't
3 just have pain in my back. Anyone who has, you know,
4 common back pain would know that -- you know that -- I
5 have nerve damage which goes down my legs. You know, I
6 have like serious pain down my legs and in my shoulders.
7 Just walking around all day with my back hurting. My
8 shoulders are super sore. My arms hurt.

9 THE COURT: So it wasn't just a back
10 massage. It was a full body massage that would help other
11 things other than your back?

12 THE WITNESS: It was -- it was just for my
13 back, but it was helping issues that were related to my
14 back, like pain caused by my back.

15 THE COURT: So as an example, the
16 neuropathy, is that what you call it --

17 THE WITNESS: You know --

18 THE COURT: -- in your legs, is that caused
19 by the disk problems in your back?

20 THE WITNESS: It's -- it's like that, bus
21 it's not that. It's sciatica.

22 THE COURT: Oh, okay.

23 THE WITNESS: It's like a pinched nerve in
24 my back because where it's broken. And degenerative disk
25 disease is where my disks are shrinking and breaking over

1 time because they don't have what they need to be strong
2 and healthy.

3 THE COURT: So that's what causes the pain
4 in your legs?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 Anything else from the jurors?

8 Any follow-up?

9 MS. LEE: No, Your Honor.

10 THE COURT: John?

11 RECROSS EXAMINATION

12 BY MR. SANDO:

13 Q. I wanted to follow up what the Judge was asking
14 you. You said it was basically a back massage?

15 A. Yes.

16 Q. But you laid on your back the whole time?

17 A. That time during that, yes. But he -- any other
18 time he massaged my back.

19 Q. But not this time?

20 A. He massaged my front too, but I had fallen asleep
21 before anything else happened. It always started on my
22 front and then turned over to my back. That's how it was
23 supposed to be.

24 Q. You woke up on your back?

25 A. No. At other times I had started on my front and

1 then turned over on my back.

2 Q. I'm talking about the last time.

3 A. The last time I woke up on my back.

4 Q. Okay.

5 A. Because I had fallen asleep before turning over
6 and starting on my back.

7 Q. You were laying on your back for the full two
8 hours?

9 A. Yes.

10 MR. SANDO: That's it.

11 THE COURT: Anything else from anybody?

12 Meagan, you're all done. Thank you very
13 much.

14 Do you have another witness for today?

15 MS. LEE: No, Your Honor.

16 THE COURT: All right. So we'll break a
17 little bit early today. If you could all be back in the
18 jury room at 10:15 tomorrow morning, and we'll get started
19 about then. Remember the admonition.

20 Meagan, give that to -- yeah, don't take
21 that with you.

22 Remember the admonition. Don't talk about
23 the case with anybody. Don't do any homework. Leave your
24 notes, your notebooks here. Ben will take care of that
25 for you. He'll have that available for you tomorrow

1 morning when you return.

2 Be safe going home. Have a good evening.
3 I'll see you tomorrow morning at 10:15.

4 (The jury exited the courtroom.)

5 THE COURT: Show the absence of the jury.
6 Anything for the record?

7 MR. SANDO: No.

8 MS. LEE: No, Your Honor.

9 (Court in recess.)
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CERTIFICATE

I, Nichole Forrest, CSR, RMR, CRR, CR #50862
certify that as an Official Court Reporter in the Superior
Court of Pima County, Arizona, I was at the hearing of the
foregoing entitled case; that while there I took down in
stenotype all the oral testimony adduced and/or
proceedings; I have transcribed such stenotype into
typewriting; and that the foregoing typewritten matter
contains a full, true and correct transcript of my
stenotype notes so taken by me as aforesaid, to the best
of my skill and ability.

/s/NICHOLE FORREST

Nichole Forrest, CSR, RMR, CRR, CR #50862
Official Court Reporter